

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1633969 Originating District: Indianapolis IN District Office
Local Filing Number: 2012-204-07396 Investigating District: Indianapolis IN District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 10/18/2011
Assignment Date: 10/26/2011

Employer Information

Trade Name: Securitas Legal Name: Securitas Security Services USA, Inc.
Address: 1033 Jackson Street EIN: 71-0912217
County: Bartholomew
NAICS Code: 561612
Columbus, IN47201 No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 08/01/2011 BNPI:
To: 11/16/2011 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

FLSANM. (b)(7)(E) gave (b)(7)(E) Investigation disclosed (b)(7)(E) expressed milk in a restroom and also in a room not free from intrusion. FC w/ VP of HR, Jane Pattison, explained provisions of FLSANM and violations. ER atc. Rec. admin. close.

WHI Signature: _____ Date: 02/10/2012

Reviewed By: _____ Date: _____

FLSA Narrative Report

Securitas Security Services USA, Inc. d/b/a
Securitas
1003 Jackson St., Ste. B
Columbus, IN 47201
FEIN: 71-0912217

Main office:
1 Campus Dr.
Parsippany, NJ 06040

Contact Person: Jane Pattison, Region Vice President of Human Resources, (317) 937-9325.

COVERAGE

The business is a corporation that provides security services to businesses. The business employs approximately (b) (4) employees in 49 countries.

The business is covered under Sec. 3(s)(1)(A) of the FLSA as its annual dollar volume (ADV) is over \$500,000; and it has at least two employees involved in interstate commerce. Per Jane Pattison, the ADV for the business for the past 3 years has been close to (b) (4) per year. Also, CRADE coverage would be applicable to the security officers who are employed at an establishment is engaged in commerce or the production of goods for commerce.

A limited investigation was conducted in 2004, which disclosed pre-shift activities that were not paid for (See WHISARD ID: 1378662). Also, a (b) (7)(E) was conducted in 2004 (See WHISARD ID: 1370582). No FLSANM history exists for this employer. The MODO is the Northern New Jersey District Office. (b) (7)(E)

This investigation was limited to (b) (6), (b) (7)(C) (b) (7)(E) and the period of investigation was August 1, 2011 to November 16, 2011.

EXEMPTIONS

Exemptions were not investigated as the investigation was limited to (b) (6), (b) (7)(C) (b) (7)(E)

STATUS OF COMPLIANCE

(b) (6), (b) (7)(C) **Status:** This investigation was initiated (b) (7)(E) (b) (6), (b) (7)(C) (b) (7)(E) expressed milk in a restroom. (b) (7)(E) and (b) (6), (b) (7)(C) was informed of the findings on February 7, 2012.

(b) (6), (b) (7)(C) was a security officer at 3 different sites during (b) (6), (b) (7)(C) time expressing milk. On November 16, 2011, WHI (b) (6), (b) (7)(C) visited the 3 client sites and took pictures/video of the rooms where (b) (6), (b) (7)(C) expressed milk (Refer Exhibit D-3 for list of locations). North Vernon Industrial Company (NVIC), (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) expressed milk in a restroom across from the Human Resources office. An employee from NVIC stated that (b) (6), (b) (7)(C) would have expressed milk in the locker room. WHI (b) (6), (b) (7)(C) inspected the locker room, and inside the locker room there was a small room with no door to shield from the locker room. The room did contain a curtain for privacy (Refer Exhibit D-4 for pictures of the NVIC locker room). At the Lowe's Distribution Center, (b) (6), (b) (7)(C) expressed milk inside the restroom inside the guard's station. There was no outlet in the restroom; (b) (6), (b) (7)(C) had to run an extension cord under the door to hook up (b) (6), (b) (7)(C) pump system (Refer D-5 for pictures of Lowe's restroom). At Faurecia, (b) (6), (b) (7)(C) expressed milk in a utility room that houses pumps for the warehouse's fire sprinkler system. The room was shielded from view, and was able to be locked. However, according to (b) (6), (b) (7)(C), multiple people had keys to the room and could enter at any time (Refer D-6 for pictures of pump house).

Originally, (b) (6), (b) (7)(C) wanted to be return to (b) (6), (b) (7)(C) original site and position where (b) (6), (b) (7)(C) was prior to expressing milk. However, the was promoted to lead officer at the Faurecia site. A lead officer is over 1 shift while a site supervisor is over all shifts. At (b) (6), (b) (7)(C) original site, (b) (6), (b) (7)(C) was paid (b) (6), (b) (7)(C) per hour and now (b) (6), (b) (7)(C) is paid (b) (6), (b) (7)(C) per hour. (b) (6), (b) (7)(C) stated that the extra (b) (6), (b) (7)(C) per hour covers (b) (6), (b) (7)(C) gas money to travel to the site. (b) (6), (b) (7)(C) was concerned that if (b) (6), (b) (7)(C) returned to (b) (6), (b) (7)(C) original site, that (b) (6), (b) (7)(C) would not be treated very well because (b) (6), (b) (7)(C) (b) (7)(E)

DISPOSITION

A final conference was held Jane Pattison on February 7, 2012 at the Indianapolis District Office. The Nursing Mothers provisions were explained to Ms. Pattison in detail. WHI (b) (6), (b) (7)(C) explained that it was a violation for the employee to express milk in a restroom and in a room that was not free from intrusion.

WHI (b) (6), (b) (7)(C) explained that the room at NVIC, even though it had a curtain, it was not free from intrusion. At Lowe's Distribution, (b) (6), (b) (7)(C) expressed milk in a rest room, which is a violation. Ms. Pattison stated they told (b) (6), (b) (7)(C) to lock the doors of the guard's shack and pull the blinds so that (b) (6), (b) (7)(C) could express milk. Ms. Pattison expressed concern that the security guards are at client sites which are not owned by Securitas, and that space for expressing milk would be limited. Ms. Pattison stated she understood the violations and **agreed to comply** with the Nursing Mother provisions going forward. (b) (6), (b) (7)(C) is no longer nursing, and does not need space or time for nursing. Ms. Pattison stated that in the future they will be more proactive in regards to this law, and once they learn that an employee will be nursing, they will work with the client site to find an adequate space that meets the requirements of the law, and also ensure that there is adequate time for the employee to express milk. Ms. Pattison also mentioned having training with her branch managers so they will be knowledgeable about the law when employees come to them with questions regarding nursing mothers and break time.

Recommendation: It is recommended the case file be closed administratively (b) (7)(E)

WHI (b) (6), (b) (7)(C)
2/7/2012

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1634908 Originating District: Indianapolis IN District Office
Local Filing Number: 2012-204-07399 Investigating District: Indianapolis IN District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 10/26/2011
Assignment Date: 10/26/2011

Employer Information

Trade Name: Star Fleet Trucking Legal Name: Star Fleet Trucking
Address: 427 W.Pike Street EIN: 27-1987910
Suite 4 County: Elkhart
Goshen, IN46526 NAICS Code: 532120
No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 11/08/2009 BNPI:
To: 11/07/2011 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Full Investigation Future Compliance Agreed: ☐
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
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FLSNM

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FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

FMLA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FMLA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

(b) (6), (b) (7)(E) (b) (6), (b) (7)(E) rights as a nursing mother was violated. (b) (6), later asked to (b) (7)(E) (b) (6), (b) (7)(E) Case was settled with (b) (6), (b) (7)(E) and ER's attorney's. Fact Sheet was given to ER's attorney.

WHI Signature: _____ Date: 12/22/2011

Reviewed By: _____ Date: _____

Star Fleet Trucking P.O.C. David Robinson
427 W. Pike Street
Suite 4
Goshen, Indiana 46526

Law Firm: Scopelitis, Garvin, Light, Hanson & Seary
10 West Market Street
Suite 1500
Indianapolis, Indiana 46204
Phone: 317-637-1777

History: None MODO: Michigan is the MODO

Reason for Investigation

(b) (6), (b) (7)(C) (b) (7)(E) filed for break times for nursing mothers with employer and the employer would not make any accommodations for (b) (6), (b) (7)(E) to express (b) (6), (b) (7)(E) breast milk for (b) (6), (b) (7)(E) nursing child.

Coverage:

Subject firm is a Trucking Company. All employees of the establishment were covered on an enterprise basis under Section 3(s) for the entire investigative period. The firm's ADV is more than \$500,000.00. The period of investigation is from 11/08/2009 to 11/07/2011.

Exemptions:

Attorney for the employer did not want to hand over any records, since (b) (6), (b) (7)(C) decided to (b) (7)(E) (b) (6), (b) (7)(E)

Status of Compliance:

Section 6: No Violations

Section 7: No violations

Section 11: No violations

Section 12: No violations

FLSNM Violation: Failed to provide adequate and private space for a nursing mother to express (b) (6), (b) (7)(E) milk.

Disposition:

The final conference was held 16 December 2011 over the phone with the attorney who represented the employer,

Mr. David Robinson from the law firm Scopelitis, Garvin, Light, Hanson & Seary, 10 West Market Street, Suite 1500, Indianapolis, Indiana 46204.

In previous conversations we discussed whether (b) (6), (b) (7)(C) (b) (7)(E) were all true as detailed by (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) (b) (7)(E) after (b) (6), (b) (7)(C) came back from 10 weeks of maternity leave that ended (b) (6), (b) (7)(C) asked (b) (6), (b) (7)(C) immediate supervisor, (b) (6), (b) (7)(C) for a lock on the break room door or a sign, so no one could come in when (b) (6), (b) (7)(C) was expressing (b) (6), (b) (7)(C) breast milk. (b) (6), (b) (7)(C) (b) (7)(E) was not given a private area, but in-fact was told to use the employees break room or the bathroom to express (b) (6), (b) (7)(C) milk. (b) (6), (b) (7)(C) told (b) (6), (b) (7)(C) would not use the bathroom, which only left the break room, according to (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) said the first week in the break room on a Thursday, during the 10th time using the break room, is when (b) (6), (b) (7)(C) was interrupted in the middle of expressing (b) (6), (b) (7)(C) milk by a (b) (6), (b) (7)(C) water vendor. (b) (6), (b) (7)(C) said since there was no sign or lock on the door, (b) (6), (b) (7)(C) put filled water bottles against the door. (b) (6), (b) (7)(C) (b) (7)(E) the (b) (6), (b) (7)(C) water vendor could see (b) (6), (b) (7)(C) expressing you milk and (b) (6), (b) (7)(C) asked (b) (6), (b) (7)(C) where to put the jugs of water (b) (6), (b) (7)(C) was delivering. (b) (6), (b) (7)(C) said (b) (6), (b) (7)(C) told (b) (6), (b) (7)(C) where to put the water jugs and told (b) (6), (b) (7)(C) to leave. (b) (6), (b) (7)(C) added this was not the first time this delivery person delivered to (b) (6), (b) (7)(C) employer.

(b) (6), (b) (7)(C) (b) (7)(E) after the confrontation with the delivery person, (b) (6), (b) (7)(C) went to (b) (6), (b) (7)(C) and was asked would (b) (6), (b) (7)(C) reconsider using the women's bathroom to express (b) (6), (b) (7)(C) breast milk. (b) (6), (b) (7)(C) said (b) (6), (b) (7)(C) told (b) (6), (b) (7)(C) no. (b) (6), (b) (7)(C) than offered a male staffer's office, but (b) (6), (b) (7)(C) said there was no lock on that door either. Then (b) (6), (b) (7)(C) offered to put a lock on the break room; the same day. Twenty minutes later, the lock was on.

(b) (6), (b) (7)(C) said that 1 June 2011, (b) (6), (b) (7)(C) reported the incident to the human resource office at Corporate, in Troy, Michigan. (b) (6), (b) (7)(C) said (b) (6), (b) (7)(C) talked with (b) (6), (b) (7)(C), and at (b) (6), (b) (7)(C) direction, sent an email of the incident to (b) (6), (b) (7)(C). (b) (6), (b) (7)(C) said (b) (6), (b) (7)(C) seemed generally horrified about the incident, saying (b) (6), (b) (7)(C) later apologized and offered to send out an email company-wide, reminding everyone of the rights of nursing mothers. (b) (6), (b) (7)(C) said (b) (6), (b) (7)(C) asked for the email not to be sent out, for fear of retaliation. (b) (6), (b) (7)(C) said after (b) (6), (b) (7)(C) talked with (b) (6), (b) (7)(C) started to feel retaliation such as assignments destined to fail and no more of (b) (6), (b) (7)(C) usual bonuses.

According to Attorney David Robinson, who represents Star Fleet Trucking, the events that happened do not agree with (b) (6), (b) (7)(C). Robinson said that (b) (6), (b) (7)(C) while on maternity leave, did not have any discussions with (b) (6), (b) (7)(C) supervisor (b) (6), (b) (7)(C) about needing a place to express milk upon (b) (6), (b) (7)(C) return. When (b) (6), (b) (7)(C) raised this issue after (b) (6), (b) (7)(C) returned, (b) (6), (b) (7)(C) offered several different location options and (b) (6), (b) (7)(C) chose the employee break room. Contrary to (b) (6), (b) (7)(C) (b) (7)(E) Robinson said at no time did (b) (6), (b) (7)(C) prohibit (b) (6), (b) (7)(C) from posting a "Do Not Enter" sign on the break room. He noted that (b) (6), (b) (7)(C) had returned from maternity leave a year prior to (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) expressed milk in a room without a lock, but posted a sign on the door. Robinson said (b) (6), (b) (7)(C) did not have an issue with (b) (6), (b) (7)(C) doing the same.

Robinson also said that Star Fleet denies that (b) (6), (b) (7)(C) requested that a lock be placed on the break room door. He (b) (7)(E) 26 May 2011 (b) (6), (b) (7)(C) used the break room to express milk. Rather than putting a sign on the door, (b) (6), (b) (7)(C) placed empty water cooler barrels immediately outside the door in an apparent effort to "block" access to the door. Unfortunately, the water cooler vendor appeared during this time period and, not understanding that the barrels were meant to block access, opened the door to the break room.

Robinson said that after (b) (6), (b) (7)(C) reported this incident, (b) (6), (b) (7)(C) again offered alternative locations to (b) (6), (b) (7)(C) for expressing milk. When (b) (6), (b) (7)(C) did not accept any of the other locations, a lock was installed on the bathroom door immediately, before (b) (6), (b) (7)(C) needed to use it again.

Robinson said that as part of Star Fleet's response to this incident, a representative of Star Fleet contacted the water cooler vendor to find out what (b) (6) recalled from this incident. This vendor informed the Star Fleet representative that (b) (6) never saw (b) (6), (b) (7)(C) expressing milk when he opened the door. Robinson said in interviewing the vendor, the vendor recalled that immediately after opening the door (which opens inward), (b) (6) heard a voice telling (b) (6), (b) (7)(C) to leave the water bottles outside the door. The vendor explained that (b) (6) did not go into the break room and that the angle in which the door opened, combined with the fact that (b) (6) had a heavy water barrel on (b) (6) shoulder prevented (b) (6), (b) (7)(C) from seeing anything.

As of to date, (b) (6), (b) (7)(C) no longer works for Star Fleet Trucking. (b) (6), (b) (7)(C) emailed me on 13 December 2011 saying (b) (6), (b) (7)(C) wished to withdraw (b) (6), (b) (7)(C) (b) (7)(E) under the Nursing Mothers Act, and this was based upon a negotiated settlement between (b) (6), (b) (7)(C) attorney, Ms. Loren Allison and Start Fleet's attorney, Mr. David Robinson.

I have since received an email and telephone call from Attorney David Robinson, representing Star Fleet Trucking, letting me know (b) (6), (b) (7)(C) decided to withdraw (b) (6), (b) (7)(C) (b) (7)(E) because of a financial agreement that was settled between (b) (6), (b) (7)(C) and Start Fleet (Exhibits E-2 through E-2-b). (b) (6), (b) (7)(C) also emailed me telling me (b) (6), (b) (7)(C) wanted to (b) (7)(E) (b) (7)(E) (Exhibit E-3). In phone conversations with Robinson and (b) (6), (b) (7)(C) both told me that there was an agreement on a financial settlement between (b) (6), (b) (7)(C) and Star Fleet. With (b) (6), (b) (7)(C) and Mr. Robinson wishing to close this case file, I suggest this file be closed.

(b) (6), (b) (7)(C)
Investigator
22 December 2011

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1638791 Originating District: Kansas City KS District Office
Local Filing Number: 2012-221-11684 Investigating District: Kansas City KS District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 12/05/2011
Assignment Date: 12/05/2011

Employer Information

Trade Name: New Visions Group Homes, Inc. Legal Name: New Visions Group Homes, Inc.
Address: 187 Highway 59 EIN: 43-1558345
PO Box 70 County: Newton
Neosho, MO 64850 NAICS Code: 09690
No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 05/16/2011 BNPI:
To: 01/10/2012 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

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FLSNM

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WHISARD Compliance Action Report

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Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

18.75 hrs. 3s1A cov. Elig EE. 13a15 exemption not applic to (b)(6) FLSANM viol: (b)(6) not provided adequate place to express. ER (Larry Elrod, owner) ATC/ATR. No BW's due. (b)(6) notified of dispo by PH, refuses remedy on 1/10/12. recommend admin closing and no further action. Pubs: WH 1282 and FS 73.

WHI Signature: _____ Date: 01/10/2012

Reviewed By: _____ Date: _____

New Visions Group Homes, Inc.
d/b/a: New Visions Group Homes, Inc.
187 Highway 59
Neosho MO 64850
Telephone: (417) 451-8951
FEIN: 43-1558345

FLSANM Narrative

Case Assignment Information: This case is assigned (b) (7)(E) (b) (6), (b) (7)(C) (b) (7)(E) that employer fails to provide an adequate space to express breast milk. A limited, FLSANM investigation for (b) (6), (b) (7)(C) is conducted.

COVERAGE: Subject firm is a community based residential care services provider operating ISL's and group homes in southwest Missouri. The firm began operations in 1990. The firm originally incorporated in Missouri on 11/13/89 but has since forfeited that incorporation (ex. C-1 & C-2).

The point of contact throughout the investigation is Director and President Larry Elrod, (417) 451-8951, lelrod@ipa.net.

The annual dollar volume for the past three calendar years for the enterprise is estimated by Mr. Elrod to be at least (b) (4) (ex. C-1). Coverage under Section 3(s)(1)(A) is applicable.

(b) (6), (b) (7)(C) Worksite: (b) (6), (b) (7)(C) is assigned to work in an ISL (Bowler house) located in the Neosho MO area at the time (b) (7)(E) <HYPERLINK>

Period of Investigation: 5/16/11 to 1/10/12

History/MODO: A Whisard search reveals no history for the firm.

EXEMPTIONS:
Not Applicable:

Section 13(a)(15): This exemption is not applicable to (b) (6), (b) (7)(C) as (b) (6), (b) (7)(C) does not work in a private home. Clients of the ISL's live in the dwellings only with assistance from New Visions (service provider). New Visions screens the living units to ensure they meet state requirements prior to clients leasing them. New Visions pays clients bills (using SSI funds) with little to no client involvement and clients are Waiver participants who are required to have roommates due to state budgetary restrictions for service approval (ex. B-1).

EMPLOYEE ELIGIBILITY: (b) (6), (b) (7)(C) is an eligible employee as (b) (6), (b) (7)(C) works for a covered employer as an hourly paid, nonexempt CMA caregiver since 11/5/04 (ex. D-5f). (b) (6), (b) (7)(C) (ex. B-2).

STATUS OF COMPLIANCE:

Section 7: Overtime:

Patient Protection and Affordable Care Act (PPACA)

207(r)(1)(B)–Place of Break:

“...place, other than a bathroom, that is shielded from view and free from intrusion from co-workers and the public, which may be used by an employee to express breast milk”

A violation occurs when (b) (6), (b) (7)(C) is not provided a place that is shielded from view and free from intrusion to express breast milk. (b) (6), (b) (7)(C) indicates that (b) (6), (b) (7)(C) is expressing at (b) (6), (b) (7)(C) work location on Bowler (an ISL) in an open room (facing away from the clients bedrooms) until 11/10/11 (ex. B-2).

(b) (6), (b) (7)(C) is transferred by the ER from the Bowler location to another location, Riverside (ISL), on 11/13/11. Note that (b) (6), (b) (7)(C) (b) (7)(E) this move is due to (b) (6), (b) (7)(C) expressing breast milk. Records received from the ER (b) (7)(E) (b) (7)(E), as the ER maintains that a client at the Bowler location requested (b) (6), (b) (7)(C) transfer for other reasons (ex. B-1 & D-5b). The Riverside location does have a utility room that the ER states can be made compliant for purposes of expressing breast milk (ex. B-1 and D-5). (b) (6), (b) (7)(C) refuses assignment to this location on 11/13/11, citing concerns with one of the residents having “sexual issues” (ex. B-2 and D-7). (b) (6), (b) (7)(C) also cites (b) (6), (b) (7)(C) concern that none of the ISL's can truly provide a place free from intrusion, as (b) (6), (b) (7)(C) believes clients will tear down any screens and intrude on any closed doors.

No back wage violation is found. (b) (6), (b) (7)(C) normal work schedule is Tuesday, Wednesday, Thursday, Sunday and Monday (ex. D-5f). (b) (6), (b) (7)(C) worked on Thursday 11/10/11 and is then instructed to work at the Riverside location on (b) (6), (b) (7)(C) next normal work day of 11/13/11. Due to (b) (6), (b) (7)(C) refusal to work at or consider a location that could be made compliant, no back wages are computed. Note that (b) (6), (b) (7)(C) also filed for and is granted unemployment benefits starting on 11/13/11 (ex. D-5e and D-7)

DISPOSITION: A final conference is held with owner Larry Elrod on 12/22/11 and 1/10/12 via telephone. A comprehensive explanation of the Break Time for Nursing Mothers provision, including coverage requirements, is given to Mr. Elrod.

Mr. Elrod states his understanding of the Act and its requirements. Mr. Elrod agrees to comply in the future. Mr. Elrod states that the violations occur due to:

The difficulty of finding a suitable place for expression in the ISL's. The homes are not owned by the firm and cannot be structurally altered by the firm. The state regulates what can be done in the home, including not "locking clients out" of areas of their residences.

The ER had no knowledge of the privacy and other requirements of PPACA under the FLSA until they began researching the issue after (b) (6), (b) (7)(C) (b) (7)(E) only of the requirement that they be allowed to pump.

The ER had not received any comments or (b) (7)(E) from (b) (6), (b) (7)(C) prior to (b) (6), (b) (7)(C) transfer. The ER knew of no concerns prior to that time.

Mr. Elrod agrees to the following specific steps to come into compliance (ex. D-).

(b) (6), (b) (7)(C) is to be moved to a position in one of the ER's group home locations effective 1/11/12.

(b) (6), (b) (7)(C) will be working with one other staff that can provide coverage, and a locking utility room is designated as the place to express.

(b) (6), (b) (7)(C) is being provided a folding chair and small table and is permitted to bring a personal cooler to store the milk.

Publications provided: WH 1282 and Fact Sheet 73.

(b) (6), (b) (7)(C) Information: (b) (6), (b) (7)(C) (b) (7)(E) with respect to the

Bowler ISL location. No back wages are due, as described in Section 7 above. (b) (6), (b) (7)(C) is notified of findings and disposition of the case by telephone on 1/10/12. Note that (b) (6), (b) (7)(C) refuses to accept the ER's proposal and maintains that the change to (b) (6), (b) (7)(C) schedule is the ER's way of making it impossible for (b) (6), (b) (7)(C) to work and take care of (b) (6), (b) (7)(C) kids, in essence causing (b) (6), (b) (7)(C) to be discriminated against. (b) (6), (b) (7)(C) further maintains that (b) (6), (b) (7)(C) is angry that Wage and Hour is involved at all, as (b) (6), (b) (7)(C) thought (b) (6), (b) (7)(C) was speaking to the EEOC and Human Rights Commission. (b) (6), (b) (7)(C) insists that Wage and Hour take no further action and hold no closing conferences with Mr. Elrod regarding this matter as (b) (6), (b) (7)(C) never wanted Wage and Hour involvement and it has only made matters worse. (b) (6), (b) (7)(C) is informed of (b) (6), (b) (7)(C) private rights in previous phone conversations, but no notification was given on 1/10/12 as (b) (6), (b) (7)(C) states this is not compliance and is not willing to converse with this WHI further.

Recommendations:

1. No further action is recommended.
2. The file is submitted for review and administrative closing.
3. Correspondence sent to the employer should be addressed to:
Larry Elrod, Director
New Visions Group Homes, Inc.
187 Highway 59
Neosho MO 64850

(b) (6), (b) (7)(C)
Investigator, Wage and Hour Division
January 10, 2012

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1638792 Originating District: Kansas City KS District Office
Local Filing Number: 2012-221-11685 Investigating District: Kansas City KS District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 12/05/2011
Assignment Date: 12/05/2011

Employer Information

Trade Name: First State Bank & Trust
Address: 15506 Pinehurst Drive

Bonner Springs, KS66012

Legal Name: First State Bank & Trust
EIN: (b) (7)(E)
County: Wyandotte
NAICS Code: 522110
No. Of Employees: (b) (7)(E)

Investigation Information

Period Investigated From: 11/07/2011
To: 12/09/2011
Investigation Type: (b) (7)(E)
Investigation Tool: (b) (7)(E)
Compliance Status: Agree to Comply

BNPI: ☐
Reinvestigation: ☐
Recurring Violation: ☐
Future Compliance Agreed: ☒
Involved in AG: ☐

Recommended Action:

BWFS: ☐
CMP: ☐
Litigation: ☐
Civil Action: ☐
Criminal Action: ☐
Submit For Opinion: ☐

RO/NO Review: ☐
Follow Up Investigation: ☐
Other Action: ☐
Denial of Future Certificate: ☐
BW Payment Deadline: ☐
Trailer forms attached: ☐

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

WHISARD Compliance Action Report

Conclusions & Recommendations:

2 hours. Ent Cov. (b) (7)(E) (b) (6), (c) wasn't given adequate space to nurse. (b) (7)(E) stated that the blinds were see through and the door didn't lock. Spoke with Angela Fleming, HR, on 12/09/11. Advised (b) (7)(E) on 12/9/11 that (b) (6), (c) would be given adequate space by the door being locked and by getting new blinds with curtains covering the windows. Verified on 12/14/11 with (b) (7)(E) that ER took care of space as discussed on 12/9/11 HRG and CL information mailed on 12/8/11.

WHI Signature: _____ Date: 12/14/2011

Reviewed By: _____ Date: _____

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1653272 Originating District: Minneapolis MN District Office
Local Filing Number: 2012-250-06697 Investigating District: Minneapolis MN District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 04/17/2012
Assignment Date: 04/17/2012

Employer Information

Trade Name: Riverview Hospital Association

Legal Name: Riverview Hospital Association

Address: 410 Dewey St

EIN: (b) (7)(E)

County: Wood

NAICS Code: 622110

Wisconsin Rapids, WI54494

No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 01/21/2012

BNPI:

To: 04/16/2012

Reinvestigation: ☐

Investigation Type: (b) (7)(E)

Recurring Violation: ☐

Investigation Tool: [REDACTED]

Future Compliance Agreed: ☐

Compliance Status: Agree to Comply

Involved in AG: ☐

Recommended Action:

BWFS: ☐

RO/NO Review: ☐

CMP: ☐

Follow Up Investigation: ☐

Litigation: ☐

Other Action: ☐

Civil Action: ☐

Denial of Future Certificate: ☐

Criminal Action: ☐

BW Payment Deadline:

Submit For Opinion: ☐

Trailer forms attached: ☐

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found: 0

Unduplicated Employees Agreed: 0

Total Amount BWs Computed: \$0.00

Total Amount BWs Agreed: \$0.00

Total Amount LDs Computed: \$0.00

Total Amount LDs Agreed: \$0.00

WHISARD Compliance Action Report

Conclusions & Recommendations:

.75 hrs 3(s)(1)(B) ent w/ADV>(b) (4) (b) (6), (b) (7)(C) (b) (7)(E) for asst w/bringing ER into compliance with PPACA requirement for nursing mothers. (b) (4) states (b) (6), (b) (7)(C) returned to work 1/21/12 after birth of child and firm has RTC with Acts requirements for break time. Contacted HR Mgr Tom Huntsberger who was aware of issues; stated he has counselling staff on compliance w/requirements. ATC in future. (b) (4) noti and informed to contact WH if firm does not comply. FS 73 to ER.

WHI Signature: _____ Date: 04/17/2012

Reviewed By: _____ Date: _____

WHISARD Compliance Action Report

U.S. Department of Labor Wage and Hour Division

Case ID: 1658797 Originating District: Grand Rapids MI District Office
Local Filing Number: 2012-185-08044 Investigating District: Grand Rapids MI District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 06/06/2012
Assignment Date: 06/06/2012

Employer Information

Trade Name: Hope Network Behavioral Health Legal Name: Hope Network Behavioral Health
Address: 3333 36th Street EIN: (b) (7)(E)
County: Kent
NAICS Code: 623220
Grand Rapids, MI 49508 No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 11/19/2011 BNPI:
To: 06/06/2012 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: ☐ Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

WHISARD Compliance Action Report

Conclusions & Recommendations:

(b) (7)(E) non exempt. (b) (7)(E) vious of Sec 7 of the FLSA per NM regs. (b) (7)(E) that (b) (6), (b) (7)(E) was not provided with a prvt room to express milk as (b) (6), (b) (7)(E) was in a supply closet and interrup'td 1-2 times per session. Jen Price, Project Manager, ATC by relocating (b) (6), (b) (7)(E) to a pvt office. Contact was made again on 6/6/2012 and WHI (b) (6), (b) (7)(C) informed (b) (6), (b) (7)(C) that reg break periods needed to be compnstd, but those above and beynd the reg break time would not. ER referred to FS 73. (b) (7)(E) infrmd of results on 6/6/12.

WHI Signature: _____ Date: 06/12/2012

Reviewed By: _____ Date: _____

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1676887 Originating District: St. Louis MO District Office
Local Filing Number: 2013-340-10176 Investigating District: St. Louis MO District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 11/27/2012
Assignment Date: 01/02/2013

Employer Information

Trade Name: Daugherty Business Solutions
Address: 3 City Place Drive
Suite 400

Saint Louis, MO 63141

Legal Name:
EIN: Dropped
County: St Louis
NAICS Code: 541690
No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 11/06/2012
To: 01/22/2013
Investigation Type: (b) (7)(E)
Investigation Tool:
Compliance Status: Not Applicable

BNPI:
Reinvestigation: ☐
Recurring Violation: ☐
Future Compliance Agreed: ☒
Involved in AG: ☐

Recommended Action:

BWFS: ☐
CMP: ☐
Litigation: ☐
Civil Action: ☐
Criminal Action: ☐
Submit For Opinion: ☐

RO/NO Review: ☐
Follow Up Investigation: ☐
Other Action: ☐
Denial of Future Certificate: ☐
BW Payment Deadline: ☐
Trailer forms attached: ☐

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

WHISARD Compliance Action Report

Conclusions & Recommendations:

No Response from (b) (7)(E) as of 1/3/2013, spoke with (b) (7)(E) sent e-mail questionnaire on 1/8/13, no response, sent contact letter on 1/16/13, informed attorney Chris Hesse no further action will be taken on behalf of (b) (7)(E) due to (b) (7)(E).
Rec drop.

WHI Signature: _____ Date: 03/13/2013

Reviewed By: _____ Date: _____

WHISARD Compliance Action Report

U.S. Department of Labor Wage and Hour Division

Case ID: 1699586 Originating District: Detroit MI District Office
Local Filing Number: 2013-185-08778 Investigating District: Detroit MI District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 06/28/2013
Assignment Date: 06/28/2013

Employer Information

Trade Name: Chrysler - Sterling Hts. Assembly Plant Legal Name: Chrysler Group, LLC
Address: 38111 Van Dyke Ave. EIN: EIN Missing
County: Macomb
NAICS Code: 33611
Sterling Heights, MI 48312 No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 07/24/2011 BNPI:
To: 07/23/2013 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Full Investigation Future Compliance Agreed: ☐
Compliance Status: Not Applicable Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

FLSNM (b) (7)(E) case. The violation (b) (7)(E) due to an (b) (6), (b) (7)(C). WHD made several attempts to contact (b) (6), (b) (7)(C). However, (b) (6), (b) (7)(C) failed to respond to DOL's telephone messages and letter requesting (b) (7)(E) in the investigation. It is recommended that the case be administratively closed.

WHI Signature: _____ Date: 08/12/2013

Reviewed By: _____ Date: _____

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1717112 Originating District: Kansas City KS District Office
Local Filing Number: 2014-221-13470 Investigating District: Kansas City KS District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 01/15/2014
Assignment Date: 01/15/2014

Employer Information

Trade Name: Little Angels Learning Center
Address: 1206 N. 155th Street

Basehor, KS66007

Legal Name: Little Angels Learning Center, Inc.
EIN: (b) (7)(E)
County: Leavenworth
NAICS Code: 624410
No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 01/14/2014 BNPI:
To: 01/15/2014 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: ☐ Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

WHISARD Compliance Action Report

Conclusions & Recommendations:

3(s)(1)(A) coverage. David Delladio, Owner/Administrator, advised he did not know of FLSNM requirements. ER advised he would designate extra room for nursing mothers, advise all ee's of their rights, place blinds over the window of the room, & create a sign to prevent intrusion. ER was provided FS #73. ER agreed to future compliance; [REDACTED] was advised of result & requested no further action.

WHI Signature: _____ Date: 01/16/2014

Reviewed By: _____ Date: _____

WHISARD Compliance Action Report

U.S. Department of Labor Wage and Hour Division

Case ID: 1723844 Originating District: Kansas City KS District Office

Local Filing Number: 2014-221-13620 Investigating District: Kansas City KS District Office

WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)

Registration Date: 03/25/2014

Assignment Date: 03/25/2014

Employer Information

Trade Name: Dillons Legal Name: The Kroger Co

Address: 604 N. West Street EIN: (b) (7)(E)

County: Sedgwick

NAICS Code: 445110

Wichita, KS 67203 No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 08/12/2013 BNPI:

To: 03/25/2014 Reinvestigation: ☐

Investigation Type: (b) (7)(E) Recurring Violation: ☐

Investigation Tool: ☐ Future Compliance Agreed: ☐

Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐

CMP: ☐ Follow Up Investigation: ☐

Litigation: ☐ Other Action: ☐

Civil Action: ☐ Denial of Future Certificate: ☐

Criminal Action: ☐ BW Payment Deadline: ☐

Submit For Opinion: ☐ Trailer forms attached: ☐

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	
Total Violations Under FLSNM:	2						\$0.00

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

WHISARD Compliance Action Report

Conclusions & Recommendations:

3(s)(1)(A) covg, 50+ EEs. (b) (6), (b) (7)(C) (b) (7)(E) (b) (6), (b) (7)(C) was given cnfrnce
rm to express milk and doesn't have access. (b) (6), (b) (7)(E) direct mngr denied tm to exprs mlk. (b) (6), (b) (7)(E) hrly EE. Phone call w/
store manager Francis Robinson (316-941-1920) 3/25 who ATC- (b) (6), (b) (7)(E) givn counseling room in pharm and will discuss w/
(b) (6), (b) (7)(E) mngr Nrsng Mthr reqrmnts. (b) (6), (b) (7)(E) ntfd on 3/25 & to call WHD if any other problems. HRG and FS 73 mld to ER.

WHI Signature: _____ Date: 03/25/2014

Reviewed By: _____ Date: _____

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1732124 Originating District: Minneapolis MN District Office
Local Filing Number: 2014-250-08251 Investigating District: Minneapolis MN District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 06/13/2014
Assignment Date: 06/13/2014

Employer Information

Trade Name: BP Food Shop Legal Name: Soltau Enterprises, Inc.
Address: 400 W. Main Street EIN: 41-1821213
Le Roy, MN55951 County: Mower
NAICS Code: 447110
No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 05/29/2014 BNPI:
To: 06/25/2014 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

3s1A cov w/ (b) (4) ADV. [REDACTED] didn't disclose to ER need to pump when hired, but other EEs advised ER of breaks. ER terminated [REDACTED] on 06/11 for, among other reasons, the pump breaks. ER also cited refusal to work scheduled hrs et al. but, due to including the pump breaks, unlawful term. While ER didn't claim, determined remedy would be an 'undue hardship' as only 2 EEs work at any given time, 1 in each area. FC 06/25 w/Brenda Soltau who ATC. Rec admin close. WH 1088 1330 1261 1282 FS 44, 16, 23, 30, 73, TIPS

WHI Signature: _____ Date: 06/26/2014

Reviewed By: _____ Date: _____

Soltau Enterprises, Inc.
dba BP Food Mart
400 Main Street
Le Roy, MN 55951
(507) 324-5822
EIN: 41-1821213
WH# 1732124

FLSA Narrative Report

Coverage: Soltau Enterprises, Inc. was incorporated in Minnesota on September 11, 1995 (see C-2) and does business as BP Food Mart. According to Co-owner Brenda Soltau, BP Food Mart is the sole location of the firm, and the sole establishment she has any interest in or direction of. BP Food Mart retails candies, food staples, beverages, and sundries; sells gasoline; and operates a small deli that sells sandwiches, pizzas, and other semi-fast food items. BP Food Mart currently has (b) (4) employees, two of which work at any given time: one operating the deli and one waiting on customers who purchase gas and other items. According to Co-owner Brenda Soltau, all employees of the establishment regularly and routinely process credit cards, and so appear individually covered under the Act. Additionally, Ms. Soltau stated that the firm grossed approximately (b) (4) in 2013, affirmed its ADV had not been less than \$500,000 in her recollection. 3(s)(1)(A) coverage is asserted. Ms. Soltau meets the Section 3(d) definition of an employer given her direction of the firm and her decisions for staffing, hiring/firing, and scheduling. She also qualifies as a “responsible party” given her ability to establish and/or change policies, to commit the firm financially, etc.

The period of this investigation was May 29, 2014 to June 25, 2014. Future correspondence should be directed to:

Brenda Soltau
BP Food Mart
400 Main Street
Le Roy, MN 55951

Exemptions: 13(a)(1) is held to apply to co-owner Brenda Soltau. The firm did not claim any exemptions for any of workers in the establishments, and none appear applicable.

Status of compliance: This was a case originated (b) (7)(E) (b) (6), (b) (7)(C) [REDACTED] There is no known history for this firm, nor any known pending 16 (b) actions. (WHISARD showed no “hits” for either BP Food Shop or “Soltau” in the Midwest region.)

Section 6: No violations cited.

Section 7: A Section 7(r) violation was cited for the unlawful termination of one employee for taking breaks for the purpose of expressing breast milk. [In this case, the employer had been unaware of the employee's need to pump when (b) (6), (b) (7)(C) was hired. (See B-4, B-1, and B-3. At B-2 b, (b) (6), (b) (7)(C) confirmed that (b) (6), (b) (7)(C) had not disclosed (b) (6), (b) (7)(C) need for the breaks to the co-owner when (b) (6), (b) (7)(C) was interviewed nor when (b) (6), (b) (7)(C) was hired.) While Ms. Soltau listed several other reasons that could constitute a reason for termination (e.g., stating (b) (6), (b) (7)(C) was no longer able to work the schedule for which (b) (6), (b) (7)(C) was hired and refusing to work a scheduled training day,) (b) (6), (b) (7)(C) also affirmed that (b) (6), (b) (7)(C) need for the breaks and having taken the breaks was at least among the reasons for which she (Ms. Soltau) terminated (b) (6), (b) (7)(C) [REDACTED] Therefore an unlawful violation is cited. While Ms. Soltau did not raise “undue hardship” as a defense, given the nature of the firm's operation (only one employee working at each of the two areas of the store,) it was determined that requiring the firm remedy the termination (i.e., restoring (b) (6), (b) (7)(C) to (b) (6), (b) (7)(C) position) would constitute an “undue hardship” (as the firm would potentially need to leave customers unattended for 15 to 20 minutes, which would be a detriment to the firm.)

Section 11: No violations cited.

Section 12: No violations cited.

Disposition: (On June 18, 2014, WHI (b) (6), (b) (7)(C) met with Co-owner Brenda Soltau by telephone. Portions of Fact Sheet #73 were reviewed with her after taking Ms. Soltau's statement of what had happened prior to the termination. (b) (7)(E) [REDACTED]

On June 25, 2014, WHI (b) (6), (b) (7)(C) held a final conference with Brenda Soltau by telephone. The concept of

coverage under the Act was reviewed. Ms. Soltau acknowledged that all employees of the firm are covered under the FLSA.

WHI (b) (6), (b) (7)(C) recounted the set-up of the business and the circumstances of (b) (6), (b) (7)(C) hiring and termination as (b) (6), (b) (7)(C) understood them. Ms. Soltau confirmed WHI (b) (6), (b) (7)(C) understanding. WHI (b) (6), (b) (7)(C) advised Ms. Soltau that, because she had terminated (b) (6), (b) (7)(C) at least in part for taking breaks to express breast milk, an unlawful violation had occurred. (b) (6), (b) (7)(C) then relayed that, given the firm's set up (only one person working in each of the two areas of the establishment,) it had been determined that requiring the firm to reinstate (b) (6), (b) (7)(C) and accommodate (b) (6), (b) (7)(C) breaks would constitute an "undue hardship" even though (b) (6), (b) (7)(C) had not raised that as an issue or defense.

WHI (b) (6), (b) (7)(C) noted that, had there been a third employee on or if both employees normally covered one area, it was likely WHI (b) (6), (b) (7)(C) would not have arrived at that same determination. The basic provisions of 7(r) were reviewed, and Ms. Soltau promised to ensure compliance going forward. Ms. Soltau stated that she had not been aware of the requirements of 7(r) prior to having done some online research about the same time she had terminated (b) (6), (b) (7)(C). She indicated the violation had been inadvertent.

A review of the basic requirements of the FLSA, along with a discussion of the most frequently encountered violations ensued, including illegal deductions, uncompensated preparatory and concluding activities, uncompensated wait and training time, the failure to include production bonuses and commissions in the calculation of the regular rate, considering a salary to be more than a method of payment, improperly classifying employees as exempt or as independent contractors, etc.

Ms. Soltau expressed surprise regarding the absolute prohibition against any incursion into the minimum wage or overtime, especially if there was theft. She stated that the firm had not made any such deductions and promised it would not do so in future. She noted that the firm would continue to furnish uniform shirts without cost (as she had indicated the firm did during the initial conference.) Ms. Soltau stated that the firm currently paid no other amounts other than the hourly rates, but said she would contact WHD if and when the firm instituted any commissions or bonuses for additional information on the "regular rate." WHI (b) (6), (b) (7)(C) stated (b) (6), (b) (7)(C) would also furnish a link to the online OT calculator. (See D-8) While the firm currently pays weekly, WHI (b) (6), (b) (7)(C) also cautioned that each workweek stands alone for the purposes of overtime, and does not allow "averaging" overtime across two or more weeks, even if the firm would

begin paying on a biweekly or semimonthly basis. Ms. Soltau was also cautioned about not allowing the “banking” of hours.

Given the firm's six employees under the age of 18, the child labor restrictions were reviewed at length. Ms. Soltau stated the firm had not hired anyone under the age of 16 and would not do so in future. She also stated the firm had no meat slicer, upright dough maker, pizza rollers or oven, or a compactor. She was advised about HO 10, HO 11, and HO 12 for future reference and cautioned regarding HO2. WHI (b) (6), (b) (7)(C) noted she would send Ms. Soltau WH-1330 and that the State of Minnesota might have more stringent requirements or different limitations on hours worked by youth.

After additional discussion including the need to ensure employees recorded all work time—including time the employer did not wish the employees to work or even if they were just engaged to wait—Ms. Soltau promised to fully comply with the Act going forward.

WHI (b) (6), (b) (7)(C) advised (b) (6), (b) (7)(C) of the outcome of (b) (6), (b) (7)(E) on June 25, 2014. (b) (6), (b) (7)(C) noted that (b) (6), (b) (7)(C) had found the undue hardship provisions online and had “thought that” they might be found to apply. A final letter was sent to (b) (6), (b) (7)(C) on June 25, 2014. (See D-7)

Publications: A Youthrulés! TIPS sheet, WH 1088, 1261, 1282, and 1330, along with Fact Sheets #44, #16, #73 and #30 were mailed to Ms. Soltau on June 25, 2014. (See also D-8)

Recommendation: I recommend that DO close this case administratively.

Submitted June 26, 2014.

(b) (6), (b) (7)(C)

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1738452 Originating District: Chicago IL District Office
Local Filing Number: 2014-149-07825 Investigating District: Chicago IL District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 08/20/2014
Assignment Date: 08/26/2014

Employer Information

Trade Name: Superior Ambulance Service

Legal Name: Superior Air, Ground Ambulance Service

Address: 395 West Lake St.

EIN: 36-2688847

County: Du Page

NAICS Code: 621999

Elmhurst, IL 60126

No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 10/01/2012

BNPI:

To: 09/12/2014

Reinvestigation: ☐

Investigation Type: (b) (7)(E)

Recurring Violation: ☐

Investigation Tool: Full Investigation

Future Compliance Agreed: ☒

Compliance Status: Compliance (no violations found)

Involved in AG: ☐

Recommended Action:

BWFS: ☐

RO/NO Review: ☐

CMP: ☐

Follow Up Investigation: ☐

Litigation: ☐

Other Action: ☐

Civil Action: ☐

Denial of Future Certificate: ☐

Criminal Action: ☐

BW Payment Deadline:

Submit For Opinion: ☐

Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

No FLSN violations, conducted interviews and profile pay period, no violations revealed.

WHI (b) (6), (b) (7)(C) recommends administrative closing.

ER ATC in the future

WHI Signature: _____ Date: 10/29/2014

Reviewed By: _____ Date: _____

Case File# 1738452

**FAIR LABOR STANDARDS ACT
NARRATIVE**

SUPERIOR AIR-GROUND AMBULANCE SERVICE, INC.

DBA: SUPERIOR AMBULANCE

395 West Lake Street
Elmhurst, IL 60123
Telephone: 630-530-2988
EIN: 36-2688847

Headquarters located

395 West Lake Street
Elmhurst, IL 6012
Additional locations See Exhibit C-1(I)

Investigative History

Whisard ID-1593220- Case registered on 8/20/2010- BEFA FLSA case, failure to pay time and one half for hours worked over 40. 1,123 employees found due \$780,096.67.

Whisard ID-1593221- Case registered on 8/20/2010- SCA and CHWSSA violations. 75 employees found due \$117,417.70.

Whisard ID-1597841- Case registered on 10/07/2010- failure to pay minimum wage due to illegal deductions. 114 employees found due \$9,165.06.

**-
COVERAGE**

The subject enterprise is engaged in providing emergency services and taking clients from nursing homes to hospitals or appointments. The company employs approximately (b) (4) full and part time employees corporate wide.

The company's Annual Dollar Volume was (b) (4) for 2011, (b) (4) for 2012 and (b) (4) for 2013. The employees handled medical supplies and equipment that came from suppliers such as Bound Tree Medical out of Ohio. As a result, enterprise coverage as defined under 3(s)(1)(A) was applicable for the investigation period and all employees were subject to the provisions under the FLSA.

MODO:

The headquarters is located in Elmhurst, Illinois, which is under the jurisdiction of the Chicago District Office. (b) (7)(E)

Section 3(d)Employer

Deb Haley is an employer that meets the definition of Section 3(d). She is the Human resource manager for the business. She participates in the day to day operations of the business and acts in the direct interest of the corporation in relation to the employees (See Exhibit C-1(a)).

Period of Investigation

10/01/2012 to September 10, 2014

Employer/Corporate Officers (see exhibit C-1(j))

David B. Hill- President and CEO- (b) (4) ownership

EXEMPTIONS

Applicable 541.200

The administrative overtime exemption was found applicable to Deb Haley. She meets the duties test, the salary exemption test and salary frequency test.

STATUS OF COMPLIANCE

Reason for Investigation:

This investigation was initiated (b) (7)(E) (b) (6), (b) (7)(C)
(b) (7)(E) the employer failed to allow (b) (6), (b) (7)(C) the necessary time needed to express (b) (6), (b) (7)(C) breast

milk. (b) (6), (b) (7)(C) claims that (b) (6), (b) (7)(C) only had 15 minutes to get to the room for the nursing mothers, which was on a different floor, express milk, clean up and get back to her desk. (b) (6), (b) (7)(C) states that due to the stress (b) (6), (b) (7)(C) quit (b) (6), (b) (7)(C) job.

(b) (6), (b) (7)(C) was informed that since (b) (6), (b) (7)(C) quit (b) (6), (b) (7)(C) job, there would not be any action taken on (b) (6), (b) (7)(C) behalf regarding the length of time given for expressing milk. (b) (6), (b) (7)(C) stated (b) (6), (b) (7)(C) understood but wanted to ensure the company knew that they had to allow for adequate time for expressing milk.

Since the company had an extensive FLSA violation history with Wage and Hour, overtime and minimum wage issues were also looked into. After time and payroll record review no violations were discovered.

Section 206-Minimum Wage

No violation

Section 207- Overtime

No violation

Section 207(r)

No violation revealed

Section 211- Record Keeping

No violation

Section 212-Child Labor

No employment of minors was observed nor found neither in employment records nor through initial conference.

DISPOSITION

A final conference was held via telephone with Debra Haley, human resource manager and WHI (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) on October 29, 2014.

The undersigned had a thorough discussion regarding applicable provisions of the Fair Labor Standards Act. The enterprise coverage applicable under the Act, the requirements under Sections 6, 7, 11, and 12 of the FLSA were reviewed in detail followed by a discussion regarding the regular rate computations, concept of hours worked and exemptions under 541.

WHI (b) (6), (b) (7)(C) addressed Section 7(r) of The Patient Protection and Affordable Care Act which amended the FLSA section 7 to provide a nursing mother reasonable break time and an adequate space for her to express breast milk.

Ms. Haley agreed to future compliance with all aspects of the FLSA in the future. The company already had a room, other than a bathroom, that was shielded from public view and free from intrusion by coworkers and the public, to be used by an employee to express breast milk. They also agreed to continue to give an employee reasonable break time to express breast milk.

(b) (6), (b) (7)(C) Notification

WHI (b) (6), (b) (7)(C) called (b) (6), (b) (7)(C) on 10/29/14 to inform (b) (6), (b) (7)(C) Wage and Hour would be closing (b) (6), (b) (7)(C) case. (b) (6), (b) (7)(C) was already made aware that little could be done under the FLSNM provisions since (b) (6), (b) (7)(C) had quit (b) (6), (b) (7)(C) job.

Recommendation

WHI recommends administrative closing of this case.

Publications Provided via Email

HRG, #44, Part 516, 541, 578, 579, 778, and 785, Fact sheet 16, CL regs, Fact Sheet 28, 28e, 28I

(b) (6), (b) (7)(C)

10/29/14

Wage Hour investigator

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1739467 Originating District: Detroit MI District Office
Local Filing Number: 2014-185-09521 Investigating District: Detroit MI District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 09/04/2014
Assignment Date: 10/02/2014

Employer Information

Trade Name: City of Detroit Legal Name: Detroit Water and Sewerage Department
Address: 735 Randolph, 20 th Floor. Room 2001 EIN: 38-3881593
County: Wayne
NAICS Code: 924110
No. Of Employees: 1497
Detroit, MI 48226

Investigation Information

Period Investigated From: 10/22/2012 BNPI:
To: 10/21/2014 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

FLSNM. Limited Investigation. 3(s)(1)(c) coverage, Sections 7 (r) violations: ER failed to provide an adequate space to express milk; the space provided was not shielded from view or interruptions. ER complied by providing ^{(b)(7)} with a space that meets the guidelines established under the FLSA. Recommend case be administratively closed. Pub provided: HRG, Fact sheet 73, & Reasonable Break time for Nursing Mothers Notice.

WHI Signature: _____ Date: 11/13/2014

Reviewed By: _____ Date: _____

**U. S. Department of Labor
Wage & Hour Division
FLSA Narrative Report**

Case File: 1739467

Local ID: 2014-185-09521

Legal Name: Detroit Water and Sewerage Department

Doing business as: **City of Detroit**

Establishment address: 735 Randolph, 20th floor

Detroit, MI 48226

Telephone Number: 313-964-9800

Federal I.D. Number: 38-3881593

Employer Contact: Karen N. Darty

735 Randolph, 20th floor, Room 2001

Detroit, MI 48226

Telephone Number: 313-964-9807

Fax: 313-842-6491

Email: darty@dwsd.org

CASE ASSIGNMENT INFORMATION:

(b) (7)(E) Data: This investigation was initiated **(b) (7)(E)** under the Break Time for Nursing Mothers under Section 29 U.S.C. 207 (r) of the FLSA. **(b) (7)(E)** **(b) (6), (b) (7)(C)** **(b) (7)(E)** the employer did not provide **(b) (6), (b) (7)(C)** with an adequate space to express milk. **(b) (6), (b) (7)(C)** stated that **(b) (6), (b) (7)(C)** was directed by **(b) (6), (b) (7)(C)** manager to go to the bathroom located in McDonald's to express milk (Exhibit D12). **(b) (6), (b) (7)(C) (b) (7)(E)**

The employer has agreed to comply with the laws enforced by the Fair Labor Standard Act and in specific

with 29 U.S.C. 207 (r) of the FLSA. The employer stated that (b) (6), (b) (7)(C) is currently has an office assignment that would last up to a month; (b) (6), (b) (7)(C) is currently nursing in a storage room that meets the established guidelines under the FLSA. Ms. Darty added that (b) (6), (b) (7)(C) would have to go back in the field and that might present a challenge for the employer because the locations where (b) (6), (b) (7)(C) works might not have private spaces other than the bathroom. Therefore the employer is considering transferring (b) (6), (b) (7)(C) to one of the office locations in order to accommodate and support (b) (6), (b) (7)(C) need to express milk.

A Limited investigation was conducted. The investigation was limited to provision enforced under the Break Time for Nursing Mothers under Section 29 U.S.C. 207 (r) of the FLSA.

Section 3(d) Employer: Ms. Karen Darty is the section 3(d) employer.

Investigation History: This is the first investigation for this employer under the Break Time for Nursing Mothers under the FLSA.

Investigation Period: The period of investigation was from October 22, 2012 to October 21, 2014.

Number of establishments: Detroit Water and Sewerage Department is a branch of the City of Detroit government

COVERAGE

The Detroit Water and Sewerage Department (DWSD) is a branch of the City of Detroit government. DWSD operates as a public agency; therefore FLSA coverage was applicable.

DWSD is one of the largest water and sewer utilities in the United States. DWSD has more than 1,700 employees and it provides water service to almost one million people in Detroit and three million people in 127 neighboring Southeastern Michigan communities throughout Wayne, Oakland, Macomb St, Clair, Lapeer, Genesee, Washtenaw and Monroe counties.

The department officially became the Detroit Water and Sewerage Department in 1973 with the adoption of Detroit's current City Charter. The Department is organized into five operating groups: Financial Services, Information Technology, Public Affairs, Wastewater Operations and Water Supply Operations.

MODO: Detroit District office is the MODO.

EXEMPTIONS:

29 U.S.C. 207 (r) (3) Undue Hardship Exemption does not apply for this employer. DWSD currently has (b) (4) employees that work for the department.

29 CFR 541.100 exemptions: was inapplicable to (b) (6), (b) (7)(C) was non-exempt hourly employee.

STATUS OF COMPLIANCE

Section 6, Minimum Wage: The investigation was limited to provision enforced under the Break Time for Nursing Mothers (Section 29 U.S.C. 207 (r) of the FLSA).

Section 7, Overtime: The investigation was limited to provision enforced under the Break Time for Nursing Mothers (Section 29 U.S.C. 207 (r) of the FLSA).

Section 7 (r): (b) (6), (b) (7)(C) is a not exempt from section 7 of the FLSA therefore (b) (6), (b) (7)(C) was entitled to all the provisions that is enforced under FLSA 207 (r) (1) of the FLSA.

Section 11, Record Keeping: The investigation was limited to provision enforced under the Break Time for Nursing Mothers (Section 29 U.S.C. 207 (r) of the FLSA).

Section 12, Child Labor: The investigation was limited to provision enforced under the Break Time for Nursing Mothers (Section 29 U.S.C. 207 (r) of the FLSA).

Civil Money Penalties: No CMP's recommended since this is the first investigation.

Disposition

On October 20, 2014, WHI (b) (6), (b) (7) held the final conference at the establishment located at 735 Randolph, 20th floor, Detroit, MI 48226 with Human Recourse Generalist Ms. Karen Darty. WHI (b) (6), (b) (7) explained Fact Sheet #73, Break Time for Nursing Mothers under the FLSA and Reasonable Break time for Nursing Mothers Notice.

Ms. Karen Darty was informed of the violations that were disclosed under Section 29 U.S.C. 207 (r) of the FLSA for the Break Time for Nursing Mothers. Ms. Darty stated that she thought that (b) (6), (b) (7)(C) issue was resolved as it was addressed before with (b) (6), (b) (7)(C) manager. WHI (b) (6), (b) (7) discussed violations addressed by (b) (6), (b) (7)(C) and explained in details laws enforced under the Break Time for Nursing Mother under the FLSA. WHI (b) (6), (b) (7) requested that managers should be aware of provisions enforced under the law to assure future compliance.

On October 31, 2014, Ms. Karen Darty stated in an email that the employer is implementing a new Nursing Accommodations Process (Exhibit D1a). The new process will be a part of the supervisor training that will be rolled out in the next few months. In the meantime, the employer is reviewing the process with the supervisors on a case by case basis. However (b) (6), (b) (7)(C) concerns were addressed directly with (b) (6), (b) (7)(C) Supervisor.

Ms. Darty also added that (b) (6), (b) (7)(C) is currently nursing in a storage room that meets the established guidelines under the FLSA. In addition, Ms. Karen Darty was planning to meet with both (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) supervisor soon to ensure that both parties understand the new process.

The employer also implemented new policy and forms to be given out to employees requesting accommodations under the Break Time for Nursing Mothers under the FLSA (Exhibit D2-D7). The form includes: Nursing Accommodations Process which explains procedures when requesting accommodations under Break Time for Nursing Mothers, Request for Nursing Accommodations, Nursing Accommodations Break Log, and Nursing Accommodations approval and denial letter.

The employer has agreed to comply with the laws enforced by the Fair Labor Standard Act and in specific with Section 7 (r). (b) (6), (b) (7)(C) was informed of these updates and was satisfied with the results.

Case ER: Case ID: 1739467

Publications: HRG, fact sheets #: 73 & Reasonable Break time for Nursing Mothers Notice.

Recommendation:

It is recommended that the case be administratively closed.

(b) (6), (b) (7)(C)

Wage Hour Investigator

11/12/2014

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1742000 Originating District: St. Louis MO District Office
Local Filing Number: 2015-340-13250 Investigating District: St. Louis MO District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 10/03/2014
Assignment Date: 11/25/2014

Employer Information

Trade Name: McKnight Place

Legal Name: McKnight Place Extended Care L.L.C.

Address: One McKnight Place

EIN: Dropped

County: St Louis

NAICS Code: 62331

Saint Louis, MO 63124

No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 10/01/2014

BNPI:

To: 04/17/2015

Reinvestigation: ☐

Investigation Type: (b) (7)(E)

Recurring Violation: ☐

Investigation Tool: Limited Investigation

Future Compliance Agreed: ☐

Compliance Status: Not Applicable

Involved in AG: ☐

Recommended Action:

BWFS: ☐

RO/NO Review: ☐

CMP: ☐

Follow Up Investigation: ☐

Litigation: ☐

Other Action: ☐

Civil Action: ☐

Denial of Future Certificate: ☐

Criminal Action: ☐

BW Payment Deadline:

Submit For Opinion: ☐

Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found: 0

Unduplicated Employees Agreed: 0

Total Amount BWs Computed: \$0.00

Total Amount BWs Agreed: \$0.00

Total Amount LDs Computed: \$0.00

Total Amount LDs Agreed: \$0.00

WHISARD Compliance Action Report

Conclusions & Recommendations:

Cov ER under FSNM, (b) (7)(E) harassment, retaliation & ER failed to provide adequate area. However, (b) (7)(E) unresponsive to calls and letters. Rec conclusion, more than 2 hours charged before re-assignment - unable to drop.

WHI Signature: _____ Date: 04/23/2015

Reviewed By: _____ Date: _____

McKnight Place Case ID: 1742000

(b) (7)(E) 10/1/14

Case assigned to WHI (b) (6), (b) (7)(C) 11/25/14

When case reassigned to WHI (b) (6), (b) (7)(C) 3/23/15, more than 2 hours had been charged to case

Unsucessful attempts to reach (b) (6), (b) (7)(C) 3/31 and 4/1/15

Letter requesting (b) (6), (b) (7)(C) contact WHI (b) (6), (b) (7)(C) and submit (b) (7)(E) statement mailed 4/3/15

(b) (7)(E) if no response by 4/17/15 submit for conclusion.

PUBS: FACT SHEET #73 Break times for Nursing Mothers mailed to ER 4/21/15

Recommend conclusion.

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1743821 Originating District: Columbus OH District Office
Local Filing Number: 2015-163-14349 Investigating District: Columbus OH District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 10/23/2014
Assignment Date: 10/23/2014

Employer Information

Trade Name: United Dairy Farmers, Inc.

Legal Name: United Dairy Farmers, Inc.

Address: 920 North Bend Road

EIN: (b) (7)(E)

County: Hamilton

NAICS Code: 447110

Cincinnati, OH 45224

No. Of Employees: (b) (7)(E)

Investigation Information

Period Investigated From: 09/05/2014

BNPI:

To: 11/04/2014

Reinvestigation: ☐

Investigation Type: (b) (7)(E)

Recurring Violation: ☐

Investigation Tool: (b) (7)(E)

Future Compliance Agreed: ☒

Compliance Status: Compliance (no violations found)

Involved in AG: ☐

Recommended Action:

BWFS: ☐

RO/NO Review: ☐

CMP: ☐

Follow Up Investigation: ☐

Litigation: ☐

Other Action: ☐

Civil Action: ☐

Denial of Future Certificate: ☐

Criminal Action: ☐

BW Payment Deadline:

Submit For Opinion: ☐

Trailer forms attached: ☐

FLSA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

FLSA covered enterprise, (b) (6), (b) (7)(C), (b) (7)(E) was not given a proper space to express breast milk, quit working for the firm before child was born, no violation disclosed the firm's HR manager was contacted and informed the importance of future compliance and stated he would send out a memo refreshing all managers regarding the nursing mothers provision FC 10-31-14 via telephone with AL Lirtzman HR Manager

WHI Signature: _____ Date: 11/04/2014

Reviewed By: _____ Date: _____

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1744968 Originating District: Des Moines IA District Office
Local Filing Number: 2015-180-13978 Investigating District: Des Moines IA District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 11/04/2014
Assignment Date: 11/04/2014

Employer Information

Trade Name: Children's Heaven Daycare #1

Legal Name: Children's Heaven 1 LLC

Address: 12171 Pacific Street

EIN: 46-2975481

County: Douglas

NAICS Code: 62441

Omaha, NE 68154

No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 10/28/2014

BNPI:

To: 11/20/2014

Reinvestigation: ☐

Investigation Type: (b) (7)(E)

Recurring Violation: ☐

Investigation Tool: Limited Investigation

Future Compliance Agreed: ☒

Compliance Status: Compliance (no violations found)

Involved in AG: ☐

Recommended Action:

BWFS: ☐

RO/NO Review: ☐

CMP: ☐

Follow Up Investigation: ☐

Litigation: ☐

Other Action: ☐

Civil Action: ☐

Denial of Future Certificate: ☐

Criminal Action: ☐

BW Payment Deadline:

Submit For Opinion: ☐

Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

FMLA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FMLA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

13.5 hrs; Ent cov; (b) (7)(E) rec'd; (b) (6), (b) (7)(C) claimed that (b) (6), (b) (7)(E) was not allowed time to express milk and was forced to quit. Viol (b) (7)(E). Also, space and FMLA issues were raised but showed no viols. ER Connie Eckersley ATFC, but refused efforts by this WHI to reinstate EE. (b) (7)(E) notified. Recomm admin close.

WHI Signature: _____ Date: 11/21/2014

Reviewed By: _____ Date: _____

Children's Heaven 1 LLC
Children's Heaven Daycare #1
12171 Pacific Street
Omaha, NE 68154
402) 333-6558

EIN: 46-2975481 (July 1, 2013 to present)
75-3151424 (until June 30, 2013)

Inv Period: October 28, 2014 to November 20, 2014

FLSA- NM Narrative

Coverage

Establishment is a child care facility operating out of four locations. All of the locations are owned by both Mariela Calderon Contreras (b) (4) and Enriqueta (Carmen) D. Loza Batiz (b) (4). Prior to July 1, 2013, Ms. Contreras owned this main location (b) (4). Ms. Contreras and Ms. Batiz are sisters. The enterprise began operations in March of 2004. Each branch establishment is a unique corporation incorporated in the State of Nebraska. (See exhibits C-2).

All four branch establishments constitute one enterprise as defined in Section 3(r)1 of the FLSA. Employees of the enterprise will work among all four branch locations of the enterprise. All four establishments operate for the same business purpose of providing care for children. Ms. Contreras and Ms. Baitz each own a (b) (4) interest in all the locations. Additionally, unified operation is asserted due to the fact that both Ms. Contreras and Ms. Batiz are involved in all significant business decisions of the enterprise.

Coverage is asserted under Section 3(s)1(b) of the Fair Labor Standards Act (FLSA). The enterprise uses a curriculum in the education of its preschool children in attendance. As such, the enterprise is named in this Section of the FLSA.

Establishment is in the process of being sold to Ana (Connie) Eckersley, who would be considered the 3(d) employer for purposes of this investigation as she was in charge of day-to-day operations.

Gross sales for the enterprise were provided to this Wage and Hour Investigator by (b) (6), (b) (7)(C) of Tax Help, Inc :

2011	(b) (4)
2012	
2013	
2013	

The Des Moines District Office is the MODO. (b) (7)(E)

Childrens Heaven Daycare #1 Case ID: 1744968

Children's Heaven 2 LLC (EIN: 26-1792451) 5616 North 103rd St, Omaha, NE 68134
Children's Heaven 3 LLC (EIN: 27-0636031) 616 South 75th St, Omaha, NE 68114
Children's Heaven 4 LLC (EIN: 27-5290045 & 46-2964168) 11325 Davenport St, Omaha, NE 68154

This investigation was limited to the Pacific Street location only and for (b) (6), (b) (7)(C) only. (b) (7)(E) was received on 11/7/14. (b) (7)(E) not received back from (b) (6), (b) (7)(C).

Exemptions

This investigation was limited to the nursing mother (b) (7)(E) and the only determination made concerning exemptions was that of (b) (6), (b) (7)(C). The employer did not claim (b) (6), (b) (7)(C) 13(b) exempt and no exemption was applicable.

Status of Compliance

History: one previous FLSA investigation was done by WHI (b) (6), (b) (7)(C) in 2011. Sec 11 violations and Sec 7 violations for \$22,161.43.

Basis for Investigation: (b) (7)(E) (b) (6), (b) (7)(C), claiming that (b) (6), (b) (7)(C) employer did not give (b) (6), (b) (7)(E) the time off to express milk as required under 207(e)(1)(A) - forcing (b) (6), (b) (7)(E) to quit (b) (6), (b) (7)(C). (b) (7)(E)

Section 6: No determination made. This investigation was limited to the nursing mother (b) (7)(E)

Section 7: No violations (b) (7)(E)

The employer could not claim the hardship exemption set forth in Section 207(r)(2) because there were more than 50 employees employed at all work sites. (see exhibit C-3)

According to (b) (6), (b) (7)(C) was not all allowed to express milk when requested, forcing (b) (6), (b) (7)(C) to leave (b) (6), (b) (7)(C) job mid-shift. (b) (6), (b) (7)(C) returned from maternity leave on Tuesday, October 28, 2014. The first two days (b) (6), (b) (7)(C) was allowed to take a break when needed, but on (b) (6), (b) (7)(C) third day of work, (b) (6), (b) (7)(C) was denied because the rooms were "out of ratio". According to (b) (6), (b) (7)(C) room had been out of ratio from the time (b) (6), (b) (7)(C) started that day (11 am). At 4 pm, an hour after (b) (6), (b) (7)(C) first asked for a break, (b) (6), (b) (7)(C) was told by the supervisor Diana Ramos that two employees were being sent home. When (b) (6), (b) (7)(C) requested that one of them stay for a few minutes to cover for (b) (6), (b) (7)(C) Diana told (b) (6), (b) (7)(C) she wouldn't do that because it may cause one of them to go into overtime status and that (b) (6), (b) (7)(C) had gotten in trouble the week before for allowing too much overtime. Finally, at 5:20/5:30, (b) (6), (b) (7)(C) could no longer hold off and left the establishment. (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) made the decision to quit because (b) (6), (b) (7)(C) felt that issue would continue to be a problem in the future.

The next day, (b) (6), (b) (7)(C) had a change of heart about quitting. (b) (6), (b) (7)(C) called and texted Connie Eckersley (the soon-to-be new owner) numerous times that day and requested to be returned to work. However, Connie denied (b) (6), (b) (7)(C) request,

saying that (b) (6), (b) (7)(F) should have called (b) (6), (b) (7)(F) before walking out.

During the site visit on 11/19/14, this WHI met with Diana and Connie. Diana told this WHI that (b) (6), (b) (7)(F) was given an opportunity to express milk. She stated that when (b) (6), (b) (7)(F) arrived that day, (b) (6), (b) (7)(F) asked to take her afternoon break at 5pm, - only one hour earlier than the previous two days - and that (b) (6), (b) (7)(F) never asked her for a break at 3pm. Diana stated that she told (b) (6), (b) (7)(F) that 5pm would be fine and that when an employee named (b) (6), (b) (7)(F) came in to work that day (starting at 5pm), she would send (b) (6), (b) (7)(F) down to relieve (b) (6), (b) (7)(F). Just as (b) (6), (b) (7)(F) was arriving, approximately 10 minutes late, (b) (6), (b) (7)(F) came to Diana and told her that (b) (6), (b) (7)(F) had talked to (b) (6), (b) (7)(C) and that they had decided that (b) (6), (b) (7)(F) was just going to quit. Diana tried to talk (b) (6), (b) (7)(F) out of quitting and asked (b) (6), (b) (7)(F) to reconsider. However, (b) (6), (b) (7)(F) quit anyway and left.

Connie stated that at no time was (b) (6), (b) (7)(F) denied the opportunity to express milk. She stated that there was only about a 10 minute gap between the requested break time and the time that (b) (6), (b) (7)(F) arrived. She also stated that had (b) (6), (b) (7)(F) indeed actually requested a break at 3pm, that Diana would have been available to relieve (b) (6), (b) (7)(F) because at no time were any of their rooms out of ratio. Diana confirms this. (Connie claims to have video evidence of such.)

(b) (7)(E)

Also discussed with Diana and Connie during the site visit was the issue of the space provided to express milk, which needed to be shielded from view and free from intrusion from co-workers and the public as required by Section 207(r)(1)(B). Both Diana and Connie stated that (b) (6), (b) (7)(F) was offered the use of a private office - with a lock on the door. They stated that (b) (6), (b) (7)(F) chose to use the cafeteria instead because there was a video camera in the office. Diana advised (b) (6), (b) (7)(F) that (b) (6), (b) (7)(F) could either turn (b) (6), (b) (7)(F) back to the camera or they could find another spot, but (b) (6), (b) (7)(F) said that (b) (6), (b) (7)(F) had a blanket and would just prefer to use the other space - even though it had a greater lack of privacy. Due to the availability of a private space, no violation of 207(r)(1)(B) was found.

Finally, the Family and Medical Leave Act was discussed, as it was determined that the employer was covered and (b) (6), (b) (7)(F) was an eligible employee. (b) (6), (b) (7)(F) had earlier mentioned to this WHI that when (b) (6), (b) (7)(F) returned from maternity leave, (b) (6), (b) (7)(F) was not reinstated to (b) (6), (b) (7)(F) previous location or shift. When this WHI asked Connie about this issue, she explained that (b) (6), (b) (7)(F) was hired as a "floater" employee. (b) (6), (b) (7)(F) was used as a fill-in supervisor at all four locations and had never had a set schedule during (b) (6), (b) (7)(F) entire employment period. (Connie provided payroll records to this WHI supporting her claim - See exhibit C-5) (b) (6), (b) (7)(F) requested to be returned to the location/shift (b) (6), (b) (7)(F) held when (b) (6), (b) (7)(F) left for maternity leave, and Connie explained to (b) (6), (b) (7)(F) that she would try, but could offer no guarantees. When (b) (6), (b) (7)(F) returned, the only spot available was the Pacific Street location at the 11am to 8pm shift. (b) (6), (b) (7)(F) told Connie that (b) (6), (b) (7)(F) would take it. Based on the documentation provided by Connie, this WHI found no FMLA violation.

Section 11: No determination made. This investigation was limited to the nursing mother (b) (7)(E)

Section 12: No violation found. This investigation was limited to the nursing mother (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) was over the age of 18 during the entire investigative period.

Disposition

A final conference was held with Connie Eckersley and this WHI via telephone on 11/21/14. All aspects of the Nursing Mother provisions of the FLSA were discussed, along with the Family and Medical Leave Act. Specifically, it was explained that either the camera needed to be shielded when an employee was expressing milk in the office, or another private space (other than a bathroom) was to be used. Connie immediately agreed to comply in the future by having the camera in the office covered or allowing the employee break room to be used (with a sign posted that it was in use and no admittance was allowed).

(b) (7)(E) (b) (6), (b) (7)(C), this WHI asked Connie if she was willing to reinstate (b) (6), (b) (7)(C). Connie respectfully declined, citing (b) (6), (b) (7)(C) history of bad behavior. Connie spoke with the owners and they felt that (b) (6), (b) (7)(C) had been given more than enough chances and they did not want (b) (6), (b) (7)(C) working there anymore. Connie provided copies of write-ups and termination letters to back up their decision. (See exhibit C-4)

(b) (6), (b) (7)(C) was notified of the results of the investigation on 11/21/14.

Recommend that case be administratively closed.

(b) (6), (b) (7)(C)
Investigator

PUBS: HRG, CL-101, FS#44, Parts 516,541,778,785, Posters

(The employer agreed to incorporate FMLA posters into her existing FMLA policy in the employee handbook.)

WHISARD Compliance Action Report

U.S. Department of Labor Wage and Hour Division

Case ID: 1746283 Originating District: Detroit MI District Office
Local Filing Number: 2015-185-09589 Investigating District: Detroit MI District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 11/19/2014
Assignment Date: 11/20/2014

Employer Information

Trade Name: Aldi Grocery Store Legal Name: Aldi, Inc.
Address: 1200 Southfield Rd. EIN: EIN Missing
County: Wayne
NAICS Code: 445110
Lincoln Park, MI 48146 No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 01/01/2014 BNPI:
To: 11/28/2014 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Compliance (no violations found) Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

Limited Investigation. 3(s)(1)(A) coverage, no Sec. 7 violations were asserted. [REDACTED] was not denied the opportunity to express milk. Publications provided: Handy Reference Guide and Fact Sheet #73. Recommend case be administratively closed.

WHI Signature: _____ Date: 01/22/2015

Reviewed By: _____ Date: _____

FLSA CASE NARRATIVE

Legal Name of Firm: Aldi, Inc. **dba:** Aldi's
Address of Firm: 1200 Southfield Rd. **EIN#:** Unknown
Lincoln Park, MI 48146
Contact Name: Manager Erin Shea
Telephone: (313) 383-9620

Case Assignment Information

The limited investigation was initiated (b) (7)(E) (b) (6), (b) (7)(C) (b) (7)(E) Aldi, Inc. violated the provisions of the of FLSA, Section 29 U.S.C. 207, Break Time for Nursing Mothers by making (b) (6), (b) (7)(C) feel uncomfortable when requesting break time to express milk. For example, when (b) (6), (b) (7)(C) requested break time to express milk, the employer "sighed" and commented that (b) (6), (b) (7)(C) was disrupting the company business. However, (b) (6), (b) (7)(C) was not denied the opportunity to express milk.

Section 3(d) Employer: Ms. Erin Shea is the section 3(d) employer.

Previous History

The employer has no prior violations under the Break Time for Nursing Mothers provisions of the FLSA.

Investigation Period

The investigative period was from January 1, 2014 to November 28, 2014.

Investigation Type

Limited investigation

Number of Establishments

Aldi operates nearly 1,300 stores in 32 states. However, the Lincoln Park, Michigan location was the only establishment physically investigated.

Coverage

The firm is a low-price grocer, which sells Aldi exclusive brand products at the lowest possible prices every day. Aldi serves more than 25 million customers each month. Aldi, Inc. is covered on an enterprise basis as stipulated in Section 3(s)(1) of the FLSA. The enterprise's annual dollar volume exceeds \$500,000 and the company receives merchandise from various parts of the United States.

Exemptions

Section 13(a)(1):

No exemptions were challenged.

Status of Compliance

Section 6 (Minimum Wage)

The investigation was limited to enforcement under the Break Time for Nursing Mothers of Section 29 U.S.C. 207 (r) of the FLSA.

Section 7 (Overtime)

The investigation was limited to enforcement under the Break Time for Nursing Mothers of Section 29 U.S.C. 207 (r) of the FLSA.

Section 11 (Recordkeeping)

The investigation was limited to enforcement under the Break Time for Nursing Mothers of Section 29 U.S.C. 207 (r) of the FLSA.

Section 12 (Child Labor)

The investigation was limited to enforcement under the Break Time for Nursing Mothers of Section 29 U.S.C. 207 (r) of the FLSA.

Disposition

WHI (b) (6), (b) (7)(C) held a final conference on December 18, 2014 with Manager Erin Shea via telephone. Investigator (b) (6), (b) (7)(C) reaffirmed Section 3(s)(1)(A) enterprise coverage and all applicable Fair Labor Standards (FLSA) requirements.

Although no violations were evident under the Break Time for Nursing Mothers (FLSA, Section 29 U.S.C. 207(r), WHI (b) (6), (b) (7)(C) explained the importance of maintaining compliance in the future. Also, it was also recommended that the employer contact the Wage and Hour Division

whenever necessary for guidance.

Ms. Erin Shea indicated that she understood the FLSA requirements, specifically, the Break Time for Nursing Mothers.

Publications

Ms. Erin Shea was mailed the following publications: HRG, Fact Sheet #73 and Reasonable Break Time for Nursing Mothers Notice.

Recommendation

It is recommended that the case be administratively closed without further action.

WHI (b) (6), (b) (7)(C)
January 21, 2015

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1751164 Originating District: Minneapolis MN District Office
Local Filing Number: 2015-250-08581 Investigating District: Minneapolis MN District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 01/26/2015
Assignment Date: 01/26/2015

Employer Information

Trade Name: Jo-Ann Fabrics Legal Name: Jo-Ann Stores LLC
Address: 160 Tyler Road North EIN: 34-0720629
County: Goodhue
NAICS Code: 453998
Red Wing, MN55066 No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 02/13/2013 BNPI:
To: 02/12/2015 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

19.75 hrs; Limited FLSANM Inv; 3(s)(1)(A) and 7(r) Cov ER; EE eligible; (b) (7)(E) ER failure to provide reasonable breaktime; (b) (7)(E) due to ER failure to provide frequency of break req by (b) (6) FC via telephone on 02/26/15 w/ Atty John Lassetter, Mgr Rochelle Mergenthal and Corp HR Mgr Kathy Scadden, WHIs (b) (6), (b) (7)(C); ER ATC; WHI rec admin cl (b) (7)(E); Pubs: HRG, FLSA, FS 44, 77A, 73, FMLA

WHI Signature: _____ Date: 02/26/2015

Reviewed By: _____ Date: _____

FLSANM NARRATIVE REPORT

Trade Name: Jo-Ann Fabric and Craft Stores
Legal Name: Jo-Ann Stores, LLC

Local Filing Number:
2015-250-08581

Subject location: 160 Tyler Road North
Red Wing, Minnesota 55066
Telephone: (651) 388-9868

Case ID: 1751164
Tax ID: 34-0720629

Corporate Headquarters: 5555 Darrow Road
Hudson, Ohio 44236
(888) 739-4120

Legal Representative:
Littler Mendelson
John Lassetter, Attorney
1300 IDS Center
Minneapolis, Minnesota 55401
(612) 630-1000

COVERAGE

The subject firm is a large multi-unit retail employer that sells fabric and craft supplies. The firm has locations throughout the United States. The corporate headquarters are located in Hudson, Ohio. The corporate structure is as follows: Jo-Ann Stores, LLC is an Ohio corporation organized under Needle Holdings, LLC, a Delaware corporation which is organized under Jo-Ann Stores Holdings Inc., also a Delaware corporation. The subject location is the retail store located in Red Wing, Minnesota, and this investigation was limited to a determination of this location's compliance under the Fair Labor Standards Act's break time provisions for nursing mothers (FLSANM). (See Exhibit C-1).

The firm's attorney, John Lassetter of Littler Mendelson, confirmed that the subject employer has an ADV in excess of \$500,000, and that the corporation employs well in excess of 50 employees throughout its many locations (Exhibit C-1). The subject location employs ^{(b) (4)} employees. Jo-Ann Fabrics is covered under 3(s)(1)(A) of the FLSA and is bound by the requirements under Section 7(r) for break time for nursing mothers because the firm employs more than fifty employees.

Period of Investigation: February 13, 2013 to February 12, 2015

MODO: The corporate headquarters of Jo-Ann Fabrics is located in Hudson, Ohio. (b) (7)(E)
(Exhibit D-1).

EXEMPTIONS

Section 13(a)(1):

Exemptions under 13(a)(1) were only reviewed as they pertain to (b) (6), (b) (7)(C) position and (b) (6) eligibility for break time for nursing mothers under Section 7 of the Fair Labor Standards Act. The exemptions under 29 CFR 541 are **not applicable** to (b) (6), (b) (7)(C) position of manager because (b) (6) is paid hourly and not on the salary basis (Exhibit B-1).

No other exemptions were reviewed due to the limited nature of this investigation.

STATUS OF COMPLIANCE

History: No history under FLSANM.

Reason for Investigation: This investigation began (b) (7)(E) (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) the employer's failure to provide reasonable and frequent enough break time for expressing breast milk. (b) (7)(E) and (b) (6), (b) (7)(C) was notified of the outcome on February 17, 2015.

Section 6: No determination of compliance under Section 6 was made due to the limited nature of this investigation.

Section 7: Section 7(r) violations disclosed due to the employer's failure to provide a reasonable amount of break time as frequently as needed by the nursing mother. (b) (6), (b) (7)(C) required three breaks per scheduled shift and was only provided with two breaks during which (b) (6) could express breast milk.

No other determinations of compliance were made under Section 7 due to the limited nature of this investigation.

Section 11: No determination of compliance under Section 11 was made due to the limited nature of this investigation.

Section 12: No determination of compliance under Section 12 was made due to the limited nature of this investigation.

DISPOSITION

An initial conference was held on February 12, 2015, during which WHIs (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) met with the store manager, Rochelle Mergenthal, and the firm's attorney, John Lassetter. The requirements under Section 7(r) of the FLSA were reviewed and the employer immediately agreed to comply. WHI (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) toured the establishment and inspected

the space provided for employees requiring break time to express milk (Exhibit D-6).

A final conference was held by telephone on Wednesday, February 25, 2015. In attendance on the call were Attorney John Lassetter, Rochelle Mergenthal (store manager), Kathy Scadden (Manager for Team Member Relations at the corporate headquarters), and WHIs (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C).

WHI (b) (6), (b) (7)(C) explained that this investigation was limited to the store's compliance with Section 7(r) of the FLSA and that no other determinations of compliance under the FLSA were made.

WHI (b) (6), (b) (7)(C) explained that Jo-Ann Fabrics is covered because it employs in excess of fifty employees, and therefore cannot allege that compliance with Section 7(r) would cause undue hardship, and that all employees that are not exempt under Section 7 of the FLSA are subject to Section 7(r). The investigator explained that a violation was disclosed when the store failed to provide (b) (6), (b) (7)(C) with the frequency of breaks she required. Ms. Scadden immediately reaffirmed the firm's intent to comply with the law and stated that she would be reviewing the firm's policy to ensure compliance company-wide.

Publications provided: HRG, Fact Sheets #44, 73, 77A, FLSA, FMLA

Recommendations: WHI recommends administrative close (b) (7)(E)

(b) (6), (b) (7)(C)

Wage Hour Investigator
February 26, 2015

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1754590 Originating District: Columbus OH District Office
Local Filing Number: 2015-163-14660 Investigating District: Columbus OH District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 03/06/2015
Assignment Date: 03/09/2015

Employer Information

Trade Name: Feintool Legal Name: Feintool US Operations, Inc.
Address: 11405 Grooms Rd EIN: (b) (7)(E)
County: Hamilton
NAICS Code: 336399
Cincinnati, OH 45242 No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 03/09/2015 BNPI:
To: 03/24/2015 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: ☐ Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

WHISARD Compliance Action Report

Conclusions & Recommendations:

FLSA enterprise covered employer. firm has over (b) (4) ees, met with HR asst Jennifer Davidson onn 3/13/14 follow up phone call with HR Director Linda Whaley, firm provided accomodation and agreed to future compliance, spoke with (b) (6) and remedy provided is to (b) (6) satisfaction. Recommend Admin closing

WHI Signature: _____ Date: 03/24/2015

Reviewed By: _____ Date: _____

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1755546 Originating District: Indianapolis IN District Office
Local Filing Number: 2015-204-08848 Investigating District: Indianapolis IN District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 03/17/2015
Assignment Date: 04/06/2015

Employer Information

Trade Name: Premiere Credit of North America Legal Name: Premiere Credit of North America, LLC
Address: 2002 Wellesley Blvd EIN: 35-2085743
Suite #100 County: Marion
Indianapolis, IN 46219 NAICS Code: 561440
No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 10/21/2014 BNPI:
To: 03/04/2015 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Full Investigation Future Compliance Agreed: ☒
Compliance Status: Compliance (no violations found) Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

FLSANM. (b) (7)(E) termination due to excessive lacion breaks. (b) (7)(E). Records show (b) (7)(E) took excessive breaks unrelated to lactation. (b) (7)(E) informed of findings. Rec. Admin. close.

WHI Signature: _____ Date: 04/22/2015

Reviewed By: _____ Date: _____

FLSANM Narrative Report

Premiere Credit of North America LLC d/b/a
Premiere Credit of North America
2002 Wellesley Blvd
Indianapolis, IN 46219
FEIN: 35-2085743

Contact:
Michelle Foley
VP of Human Resources
317.375.6554 – direct
317.446.4401 – cell
mfoley@premierecredit.com

COVERAGE

Premiere Credit is a debt collection firm that works to collect on balances owed for medical, tax, and student loan debt. The firm is covered under section 3(s)1(A) of the FLSA due to annual dollar volume being (b) (4) for 2012, (b) (4) for 2013, and (b) (4) for 2014 (see Exhibit C – 1).

There are (b) (4) employees at the location in which (b) (6), (b) (7)(C) was employed (see Exhibit C - 2 and therefore is required to comply with the Nursing Mothers provisions of the FLSA. There are 661 employees company wide.

History: 1712162 – FMLA – No violations disclosed
1712165 – FLSA/SCA – No violations disclosed

(b) (7)(E) (see Exhibit D – 11).

This investigation was limited to (b) (6), (b) (7)(C) (b) (7)(E) and the period of investigation was October 21, 2014 to March 2, 2015.

EXEMPTIONS

Exemptions were not investigated as the investigation was limited to (b) (6), (b) (7)(C) (b) (7)(E) related to the Nursing Mothers provisions of the Fair Labor Standards Act.

STATUS OF COMPLIANCE

(b) (6), (b) (7)(C) Status:

This investigation was initiated (b) (7)(E) (b) (6), (b) (7)(C) (b) (7)(E) was terminated due to taking excessive lactation breaks. (b) (6), (b) (7)(C) submitted a (b) (7)(E) (b) (6), (b) (7)(E) (b) (7)(E) and (b) (6), (b) (7)(C) was informed of the findings on April 20, 2015 via telephone.

On April 20, 2015 WHI (b) (6), (b) (7)(C) visited Premiere Credit facility at 6550 E. 30th Street, Indianapolis for the Initial Conference, Record Review, and to tour the lactation space. WHI (b) (6), (b) (7)(C) met with Michelle Foley – VP of Human Resources and David Dubois – VP of Operations.

Refer Exhibit D – 1, 2 for pictures of the space used for lactation:

- D – 1: Front View of Room
- D – 2: Inside View of Room

This space is an unused office. It is secure as it has a locking door. Further, the space can only be accessed by nursing mothers whose badges have been coded to allow them access. No violations related to the lactation space were disclosed.

The Employers building is equipped with badge swipe entry point at each door. The Employer provided records showing (b) (6), (b) (7)(C) swipes for a 2 week period prior to (b) (6), (b) (7)(C) termination. The records show (b) (6), (b) (7)(C) swipes to the lactation space (see Exhibit D - 7). The Employer does not have a way of showing how long (b) (6), (b) (7)(C) was in the space as only a swipe is required to gain entry to the space. Therefore, excessive lactation breaks are irrelevant. However, the Employer provided records showing (b) (6), (b) (7)(C)

swipes in and out of the main entrance of the building and the collection floor entrance (see Exhibit D – 6). These records show that (b) (6), (b) (7)(C) was away from (b) (6), (b) (7)(C) for excessive amounts of time and this is why (b) (6), (b) (7)(C) was terminated (see Exhibit D – 3).

DISPOSITION

A final conference was held via phone on April 22, 2015 with Michelle Foley – VP of Human Resources, David Dubois – VP of Operations, and Investigator, (b) (6), (b) (7)(C), representing the Wage and Hour Division. The Nursing Mothers provisions were explained to Ms. Foley and Mr. Dubois in detail. WHI (b) (6), (b) (7)(C) explained that the Nursing Mothers provisions require Employers to provide a reasonable amount of break time to express milk as frequently as needed by the nursing mother. Scheduling and length of the breaks cannot be controlled by the Employer. WHI (b) (6), (b) (7)(C) explained that Employers are not required under the FLSA to compensate nursing mothers for breaks taken for the purpose of expressing milk; however, if compensated breaks are provided to other employees, an employee who chooses to use that break time to express milk must be compensated in the same way as other employees who may not be expressing milk.

WHI (b) (6), (b) (7)(C) explained that the investigation revealed excessive breaks were being taken outside of the time spent by (b) (6), (b) (7)(C), expressing milk. The badge swipe reports verified that (b) (6), (b) (7)(C) was spending anywhere from 5 – 50 minutes in additional break time. The Employer allows part time employees to take either two 15 minute paid breaks or one 30 minute paid lunch. (b) (6), (b) (7)(C) was not only taking (b) (6), (b) (7)(C) 30 minutes, but additional time as well. It is clear from the swipe reports that (b) (6), (b) (7)(C) was taking excessive breaks and that (b) (6), (b) (7)(C) termination was not in relation to discrimination or retaliation for her being a nursing mother.

Ms. Foley and Mr. Dubois stated they understood the violations and **agreed to comply** with the Nursing Mother provisions going forward.

Recommendation:

It is recommended the case file be closed administratively (b) (7)(E)

Publications Provided:

- WHD Fact Sheet #73: Break Time for Nursing Mothers
- Handy Reference Guide to the FLSA

(b) (6), (b) (7)(C)

Investigator

April 22, 2015

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1757535 Originating District: Minneapolis MN District Office
Local Filing Number: 2015-250-08685 Investigating District: Minneapolis MN District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 04/09/2015
Assignment Date: 04/09/2015

Employer Information

Trade Name: State of Wisconsin DOT
Address: 7301 W Mill Road

Milwaukee, WI 53218

Legal Name: State of Wisconsin DOT
EIN: 39-6006446
County: Milwaukee
NAICS Code: 09260
No. Of Employees: 21

Investigation Information

Period Investigated From: 05/07/2014 BNPI:
To: 05/07/2015 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☐
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

78hrsCOV:3s1c (b) (7)(E) ER reg. director, ask subordinate EE to interrupt (b) (7)(E) to get keys while (b) (7)(E) expressing milk on 2 occasions (b) (7)(E) provided (b) (7)(E) 4/21/15. IC on 4/28/15. Site inspected. (b) (7)(E). However, during investigation (b) (7)(E) given written Memo of Expectation re: taking 5&10 minutes longer to express milk & a reprimand. Held FC 7/17/15, ER ATC & remove memo+reprimand section from (b) (7)(E) personnel file.
Pubs:HRG,FS73,FLSA,CFR516,541,775,778 (b) (7)(E) notified 7/21/15. Rec admin closure.

WHI Signature: _____ Date: 08/04/2015

Reviewed By: _____ Date: _____

FLSA NM Narrative

State of Wisconsin – Department of Transportation

7301 W Mill Road
Milwaukee, WI 53218

Legal Name: State of Wisconsin – Department of Transportation.

FEID: 396006446

Case ID: 3733017

Person responsible:

Carolyn Rodgers,
Center/Branch Supervisor
7301 W Mill Road
Milwaukee, WI 53218

Contact Person:

Randy Server
Director of Human Resources
4802 Sheboygan Ave.
PO BOX 7910
Madison, WI 53707

Officers:

Mark Gottlieb,
Secretary of WI DOT

Patrick Fernan,
Administrator, DMV

COVERAGE

Legislative Background

The Affordable Care Act added a new subsection (r) to section 7 of the Fair Labor Standards Act (FLSA), requiring employers to provide nursing mothers with:

- 1) a reasonable break time to express milk for one year after her child's birth each time such employee has need to express breast milk; and
- 2) a private space, other than a bathroom, that is shielded from view and free from intrusion of others, to express breast milk.

Subsection (r) applies only to employees who are non-exempt from Section 7 of FLSA.

Time for Breaks

As implemented for the Executive Branch, agencies should provide nursing mothers with a reasonable break time to express breast milk whenever needed throughout the workday. The frequency and duration of time necessary to express breast milk may vary depending on the needs of the nursing mother.

Location of Breaks

Agencies should provide nursing mothers with a private space, other than a bathroom, that is shielded from view and free from intrusion of others to express breast milk. While the space does not need to be exclusively dedicated to this purpose, a temporary space that meets the other requirements listed above is appropriate.

Compensation

The legislation does not require employers to compensate nursing mothers for breaks taken to express breast milk. However, if a nursing mother chooses to use an established compensated 5 break time as a time to express breast milk, then she must be compensated as she normally would.

Period of Investigation: May 7, 2014 o May 7, 2015

ADV: ADV not needed. The employer is a named entity.

Nature of Business: The organization is a state government. They grant state driver's license to state/local drivers.

Number of establishments: 120+

Employees: 3600 state wide and approximately 21 employees at 7301 W Mill Road Milwaukee WI 53218.

3(d) employer: Carolyn Rodgers is the 3d employer for this organization. Randy Sarver, Director of HR would also be another 3d employer. They both supervise and manage staff. They act directly in the interest of the employer.

Coverage: 3(s)(1)(c) Public Agency. The employer is named entity and a state government. (*Exhibit C-1*).

The organization is a public agency that grants driver's licenses to drivers. The firm has several locations throughout the state of Wisconsin. The corporate headquarters are located in Madison, WI. The subject establishment is a public location located in Milwaukee, WI and this investigation was limited to a determination of this location's compliance under the Fair Labor Standards Act's break time provisions for nursing mothers (FLSANM).

The subject location employs 21 employees. The employer is covered under 3(s)(1)(C) of the FLSA and is bound by the requirements under Section 7(r) for break time for nursing mothers because the employer is public agency.

MODO: The corporate headquarters of the employer are located Madison, WI. The MODO is the Minneapolis DO (*Exhibit D-0*).

EXEMPTIONS

Section 13(a)(1):

Exemptions under 13(a)(1) were only reviewed as they pertain to (b) (6), (b) (7)(C) position and (b) (6) eligibility for break time for nursing mothers under Section 7 of the Fair Labor Standards Act. The exemptions under 29 CFR 541 are **not applicable** because (b) (6) is paid hourly and not on the salary basis (*Exhibit B-1*).

No other exemptions were reviewed due to the limited nature of this investigation.

STATUS OF COMPLIANCE

History: No history under FLSANM.

Reason for Investigation: This investigation began after (b) (7)(E) (b) (6), (b) (7)(C) the employer, on two occasions, interrupted (b) (6) while (b) (6) was expressing breast milk. (b) (6), (b) (7)(C) (b) (7)(E) (*exhibit D-5*).

(b) (7)(E) However, there were other Section 7(r) issues noted below.

Section 6: No determination of compliance under Section 6 was made due to the limited nature of this investigation.

Section 7: Section 7(r) violation due to the 2010 amendment of the FLSA Nursing mothers. during the course of the investigation (on 5/14/15) (b) (6), (b) (7)(C) received a write-up in the form of a “Memo of Expectations” (*exhibit D-2*) for an incident that occurred during the investigatory period for taking 5 minutes and 10 minutes more time to express milk for a total of 25 and 30 minutes of time to express milk during morning and afternoon breaks. (b) (6), (b) (7)(C) (b) (7)(E) on that day, 5/5/15, (b) (6) was having a malfunction and was having problems expressing milk. (b) (6) stated that because (b) (6) supervisor was not in, (b) (6) notified (b) (6) team leaders (b) (6), (b) (7)(C) on 5/5/15 during (b) (6) AM and (b) (6), (b) (7)(C) during (b) (6) PM break.

(b) (7)(E) Supervisor Carolyn Rodgers asked (b) (6) why (b) (6) took longer than 20 minutes and (b) (6), (b) (7)(C) explained (b) (6) was having trouble expressing milk. (b) (7)(E) Rodgers charged the extra time against (b) (6) vacation time. However, (b) (7)(E) (b) (6) caught this, brought it up to Rodgers and that it was credited back. (b) (6) stated that Rodgers told (b) (6) that (b) (6) violated the company rules because 20 minutes was a reasonable amount of time to express milk. Compared to the usual 20 minutes that (b) (6) was allowed to express milk, 25 and 30 minutes would still fall within a “reasonable amount of time to express milk” and triggered a violation of the FLSNM.

Section 11: No determination of compliance under Section 11 was made due to the limited nature of this investigation.

Section 12: Records showed 16 and 17 year olds working as cashier. No violation disclosed.

DISPOSITION

On April 28, 2018, WHI (b) (6), (b) (7)(C) toured the establishment and inspected the space provided for employees requiring break time to express milk. The space was in compliance with the FLSA Nursing Mothers requirements (*Exhibit D-7*).

A final conference was held on July 10, 2015 and on July 17, 2015. In attendance was Human Resources Director Randy Sarver representing the employer and WHI (b) (6), (b) (7)(C) representing the wage and hour division.

WHI (b) (6), (b) (7)(C) explained that employer is covered because it is a named enterprise/state government.

WHI (b) (6), (b) (7)(C) explained that this investigation was limited to the compliance with Section 7(r) of the FLSA and that no other determinations of compliance under other sections of the FLSA were made.

The investigator explained that an employer was required to provide (b) (6), (b) (7)(C) with the frequency of breaks (b) (6), (b) (7)(C) required and a place free from intrusion of the public and other employees.

The employer reaffirmed the organization's intent to comply with the law regarding nursing mothers in the future.

WHI informed the employer that the memo dated May 14, 2015 (*exhibit D-2*) indicating that (b) (6), (b) (7)(C) was in violation of their policy regarding *time limits and rest breaks* for taking an extended amount of time was in violation of Section 7(r) of the FLSA. The employer agreed to remove this memo from the employee's personnel records.

On June 6, 2015, during the course of the investigation, (b) (6), (b) (7)(C) also received a letter of reprimand (*exhibit D-1*) for incidents that occurred on or around January 27 and January 28, 2015. While (b) (6), (b) (7)(C) was reprimanded for a number of reasons outside the jurisdiction of the FLSA Nursing mothers, part of the reprimand that (b) (6), (b) (7)(C) was cited for was “*Failure to observe the time limits for meal periods, rest breaks, and wash-up times.*” This referred to two incidents that occurred inside of the investigatory period on January 27 and 28 of 2015. The employer conducted an investigation and found that the amount of time (b) (6), (b) (7)(C) took exceeded the allowed time and when questioned, (b) (6), (b) (7)(C) did not and could not attribute the extra time to expressing milk. WHI made two attempts (case diary) to contact (b) (6), (b) (7)(C) regarding this issue but contact could not be established before the final conference. The employer was questioned about these incidents and indicated that during their investigation, (b) (6), (b) (7)(C) took an extra eight minutes of time and was written up for that. WHI (b) (6), (b) (7)(C) requested the employer to have that specific section taken out of the reprimand. The employer agreed to remove the “*Failure to observe the time limits for meal periods, rest breaks, and wash-up times*” from the reprimand.

Ongoing conversation with the employer led to the employer agreeing to add language to their state wide policy regarding nursing mothers. Case conference with District Director King regarding and possible ECA was held and it was determined that an ECA would probably not be the best course of action.

The employer future agreed to compliance of Section 7(r) and section 12 of the FLSA.

That WHI explained that the investigation was limited to (b) (6), (b) (7)(C) and that no determination of compliance under Section 6 or 11 were made due to the limited nature of the investigation.

(b) (6), (b) (7)(C) Notified: (b) (6), (b) (7)(C) was notified of the outcome via phone on July 21, 2015.

Publications provided: HRG, Fact Sheets #44, 73, 77A, FLSA, CFR 516, 541, 778, 785, CL 101, FLSA poster

Recommendations: WHI recommends administrative closure (b) (7)(E)

(b) (6), (b) (7)(C)
Wage Hour Investigator
July 21, 2015

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1758208 Originating District: Detroit MI District Office
Local Filing Number: 2015-185-09705 Investigating District: Detroit MI District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 04/16/2015
Assignment Date: 04/16/2015

Employer Information

Trade Name: Ford Motor Company- Michigan Assembly Legal Name: Ford Motor Company Inc.
Address: 38303 Michigan Ave. EIN: 38-0549190
County: Wayne
NAICS Code: 336112
Wayne, MI 48184 No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 11/07/2014 BNPI:
To: 04/30/2015 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

Limited Investigation. 203(s)(1)(A) covered, Sec 207 (r) (1)(A) violation Break Time for Nursing Mothers: FC held 7/13/15. ER failed to provide (b)(6) with enough time to express milk and (b)(6) rec'd written notice for returning late after break whereas (b)(6) was expressing milk. ER ATC..ATM ER removed written notice and in compliance. Pub provided FLSA, FS73, FAQ, CL101, WH1420, FMLA EE/ER refs guides.

WHI Signature: _____ Date: 07/15/2015

Reviewed By: _____ Date: _____

FLSA NARRATIVE

Michigan Assembly Plant

Legal Name: Ford Motor Company Inc.

Establishment address: Ford Motor Company-Michigan Assembly Plant
38303 Michigan Ave.
Wayne, MI 48184

Federal I.D. Number: 38-0549190

Employer Contact: Kienbaum Opperwall Hardy & Pelton P.L.C
Attorneys and Counselors
Shannon V. Loverich, Attorney
280 North Old Woodward Ave #400
Birmingham, MI 48009
248-645-0000

CASE ASSIGNMENT INFORMATION:

(b) (7)(E) Data: This investigation was initiated due to **(b) (7)(E)** under the Break Time for Nursing Mothers (Section 29 U.S.C. 207 (r) of the Fair Labor Standards Act). **(b) (6), (b) (7)(C)** of Ford Motor Company **(b) (7)(E)** the employer did not provide **(b) (6), (b) (7)(C)** with enough time to express milk during breaks or additional unpaid time passed break time.

(b) (6), (b) (7)(C) also **(b) (7)(E)** **(b) (6), (b) (7)(C)** received a written notice on April 19, 2015 for returning late from break whereas **(b) (6), (b) (7)(C)** was expressing milk. **(b) (6), (b) (7)(C)** filed a grievance to have written notice removed from **(b) (6), (b) (7)(C)** record. **(b) (6), (b) (7)(C)** **(b) (7)(E)**

Monday, July 13, 2015 final conference was held via teleconference; WHI **(b) (6), (b) (7)(C)** discussed **(b) (7)(E)** with Ford Motor Company's representative Attorney Shannon Loverich.

Attorney Loverich stated that **(b) (7)(E)** were isolated and Ford Motor Company has a policy in place for nursing mothers which is provided to employees and staff (See exhibit D2-D2a)

Attorney Loverich stated during final conference that Ford Motor Company will remove written notice from **(b) (6), (b) (7)(C)** record and that Ford Motor Company's Michigan Assembly Plant is in compliance with Section 207(r) Break Time for Nursing Mothers under the Fair Labor Standards Act and agree to fully to future compliance.

Tuesday, July 14, 2015 WHI (b) (6), (b) (7)(C) contacted (b) (6), (b) (7)(C) advised (b) (6), (b) (7)(C) that investigation was concluded and Ford Motor Company has agreed to remove written notice once grievance filed with Union Local 900 has gone through its proper channels WHI (b) (6), (b) (7)(C) also advised (b) (6), (b) (7)(C), Attorney Loverich stated that Ford Motor Company has rectified (b) (6), (b) (7)(C) break time to express milk they are in compliance with the Fair Labor Standards Act Break Time for Nursing Mothers. (b) (6), (b) (7)(C) confirmed that (b) (6), (b) (7)(C) now receives enough time to express milk. (b) (6), (b) (7)(C) thanked WHI (b) (6), (b) (7)(C) for her help.

(b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) recently had to take a day off because (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) had documentation to support reason for being absent; however excuse was not granted (b) (6), (b) (7)(C) was told it was because (b) (6), (b) (7)(C) had exhausted all (b) (6), (b) (7)(C) sick time the previous year; (b) (6), (b) (7)(C) stated (b) (6), (b) (7)(C) was unaware that when (b) (6), (b) (7)(C) was off on Family and Medical Leave (FML) due to (b) (6), (b) (7)(C) pregnancy (b) (6), (b) (7)(C) personal days ran concurrent with FML. (b) (6), (b) (7)(C) also stated (b) (6), (b) (7)(C) was given a day off after calling off for (b) (6), (b) (7)(C) own illness because (b) (6), (b) (7)(C) did not provide requested documentation (b) (6), (b) (7)(C) failed to provide during meeting with union and labor relations. WHI (b) (6), (b) (7)(C) advised (b) (6), (b) (7)(C) that this would be noted; however WHI (b) (6), (b) (7)(C) explained to (b) (6), (b) (7)(C) should continue to work with union and follow company's absentee policy. (b) (6), (b) (7)(C) understood and again said thanks.

Investigation Type: A Limited investigation was conducted.

Section 203(d) Employer: Mr. Joseph Shine of Labor Relation is the Section 203(d) employer.

Investigation History: This is the first investigation for this employer under the Break Time for Nursing Mothers under the FLSA.

Investigation Period: November 7, 2014 – April 30, 2015

Number of establishments: Ford Motor Company Inc. manufactures automobiles across six continents; however Ford Motor Company's Michigan Assembly Plant location was the only establishment physically investigated.

COVERAGE:

203(s)(1)(A)(i): Michigan (Wayne) Stamping & Assembly Plant is an entity of Ford Motor Company which was incorporated 1903. Ford Motor Company manufacture's automobiles globally. Michigan (Wayne) **Stamping & Assembly Plant manufactures Ford Focus, and Ford C-Max vehicles. Currently the Plant has more than (b) (4) employees.**

Michigan (Wayne) Stamping & Assembly Plant was covered on an enterprise bases for the entire investigative period. Ford Motor Company routinely ordered products that have traveled in interstate commerce.

All employees of the establishment were covered on an enterprise bases under Section 203(s)(1)A for the entire investigative period.

203(s)(1)(A)(ii): Ford Motor Credit Company is a billion dollar corporation. In 2014 its gross earnings were over (b) (4) dollars globally.

MODO: Michigan is the MODO for this employer

EXEMPTIONS: No exemptions were challenged.

STATUS OF COMPLIANCE

Section 206-Minimum Wage: The investigation was limited to enforcement under the Break Time for Nursing Mothers of Section 29 U.S.C. 207 (r) of the FLSA.

Section 207-Overtime: The investigation was limited to enforcement under the Break Time for Nursing Mothers of Section 29 U.S.C. 207 (r) of the FLSA.

Section 207 (r): (b) (6), (b) (7)(C) is a non-exempt employee, therefore (b) (6), (b) (7)(C) entitled to all the provisions that is enforced under FLSA §207 (1)(r).

Section 207 (r)(1)(A): A Reasonable Break Time: violation found

Interview statement from (b) (6), (b) (7)(C) revealed that employer did not allow (b) (6), (b) (7)(C) adequate time to express breast milk during (b) (6), (b) (7)(C) breaks nor did employer allow (b) (6), (b) (7)(C) additional unpaid breaks to express milk.

Section 211, Record Keeping: The investigation was limited to enforcement under the Break Time for Nursing Mothers of Section 29 U.S.C. 207 (r) of the FLSA.

Section 212, Child Labor: The investigation was limited to enforcement under the Break Time for Nursing Mothers of Section 29 U.S.C. 207 (r) of the FLSA.

Disposition

On Monday, July 13, 2015, WHI (b) (6), (b) (7)(C) held a final conference via telephone conference with Ford Motor Company's representative Attorney Shannon Loverich. WHI (b) (6), (b) (7)(C) represented Wage and Hour Division.

WHI (b) (6), (b) (7)(C) discussed the applicable Fair Labor Standards Act requirements specifically Section 207(r) Break Time for Nursing Mothers and Fact Sheet #73, Break Time for Nursing Mothers under the FLSA and Reasonable Break time for Nursing Mothers Notice, Child Labor and Family and Medical Leave Act with employer's representative.

WHI (b) (6), (b) (7)(C) discussed the findings of investigation:

§207(r) Break Time for Nursing Mothers

WHI (b) (6), (b) (7)(C) discussed violations addressed by (b) (6), (b) (7)(C) and explained in details laws enforced under the Break Time for Nursing Mothers under the FLSA WHI (b) (6), (b) (7)(C) explained to Attorney Loverich when Ford Motor Company- Michigan (Wayne) Assembly Plant did not allow (b) (6), (b) (7)(C) enough time to express milk resulted in a violation, in addition, to (b) (6), (b) (7)(C) had received a write up for returning late after break whereas (b) (6), (b) (7)(C) was expressing milk on April 19, 2015.

Reason given by Attorney Loverich was that (b) (6), (b) (7)(C) (b) (7)(E) was an isolated case and Ford Motor Company is in compliance and agreed to continue compliance. Attorney Loverich stated that there are other nursing mothers on shift and there are no issues when it came to having enough time provided when expressing milk.

Attorney Loverich stated the night supervisor were asking for verification for medical restriction; night supervisor on shift has been informed that break time for mothers expressing milk is not a medical restriction and are permitted to used reasonable time during breaks to express milk.

Furthermore, Attorney Loverich stated that night shift supervisors do not have full staff in Labor Relation as the day shift to verify any questions regarding labor relations that may arise.

Attorney Loverich stated that the issue of not having enough time for (b) (6), (b) (7)(C) to express milk has been rectified and once grievance process is completed the written notice for returning late after (b) (6), (b) (7)(C) break to express milk on April 19, 2015 will be removed.

Attorney Loverich will send Wage and Hour a letter confirming written notice has been removed from (b) (6), (b) (7)(C) record.

Attorney Loverich stated that Ford Motor Company has agreed fully to continue compliance with the laws enforced by the Fair Labor Standard Act and in specific with 29 U.S.C. 207 (r) of the FLSA.

(b) (7)(E)

Recommendations: It is recommended that the case be administratively closed without further action.

Publications: Attorney Shannon Loverich was mailed the following documents:

FLSA – The Fair Labor Standards Act

Handy Reference Guide to the FLSA

Fact Sheet 73 Break Time for Nursing Mothers under the FLSA

Frequently Asked Questions – Break Time for Nursing Mothers

CL-101- Child Labor Provisions for Nonagricultural Occupations Under the FLSA

WH 1420 – Employee Rights and Responsibilities Under The Family Medical Leave Act

- 29.U.S.C. 2601 The Family and Medical Leave Act of 1993
- The Employee's Guide to The Family and Medical Leave Act

Recommendation: It is recommended that the case be administratively closed (b) (7)(E)

(b) (6), (b) (7)(C)

Wage and Hour Investigator

Mail correspondence to:

Ford Motor Company c/o

Kienbaum Opperwall Hardy & Pelton P.L.C

Attorneys and Counselors

Attention: Attorney Shannon V. Loverich

280 North Old Woodward Ave #400

Birmingham, MI 48009

WHISARD Compliance Action Report

U.S. Department of Labor Wage and Hour Division

Case ID: 1758259 Originating District: Minneapolis MN District Office
Local Filing Number: 2015-250-08703 Investigating District: Minneapolis MN District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 04/17/2015
Assignment Date: 04/17/2015

Employer Information

Trade Name: Meriter Hospital Legal Name: Iowa Health System
Address: 202 S. Park St EIN: 39-0806367
County: Dane
NAICS Code: 622110
Madison, WI 53715 No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 03/27/2015 BNPI:
To: 05/01/2015 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Compliance (no violations found) Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

WHISARD Compliance Action Report

Conclusions & Recommendations:

38.5 hrs; written (b) (7)(E) by (b) (6), (b) (7)(C) 4/20/15, enterprise coverage under 3(s)(1)(A)&(B) applicable, (b) not X from section 7, (b) (7)(E) not given breaks to express milk (b) (7)(E), NV, FC 5/1/15 with Shana Wuebben, Director of Labor & Employee Relations, EEO Officer, & Kris Holmes, Director of Medical/ Surgical Nursing, at estab, agreed to future compliance, (b) notified by voice mail on 5/1/15, rec admin cl, pubs: HRG, 101,825, FS 44,73,77A,28,28A,28D,21,&31;FAQ-NM,EEcard NM,1088,1089,1420,1462

WHI Signature: _____ Date: 05/22/2015

Reviewed By: _____ Date: _____

Case #: 2015-250-08703
1758259

Iowa Health System Iowa Corporation, 12/31/94
d/b/a Unity Point Health
d//b/a Meriter-Unity Point Health
d/b/a Meriter Health Services, Inc
d/b/a Meriter Hospital, Inc WI Corporation, 3/24/1898
202 S Park St @ hospital (b) (4) employees
Madison, WI 53715 under corporation- (b) (4) ees
General Phone: 608 417 6000
Shana Wuebben, Director of Labor & Human Relations/ EEO Officer: 608 417
6053

Main Office:
Iowa Health System (b) (4) employees
d/b/a Unity Point Health
1776 West Lakes Parkway
Suite 400
West Des Moines, Iowa 50266
515 241 6161

Branches:
Seventeen hospitals
280 clinics
13 home care locations (that provide services in patients' homes)
Four colleges
One Health Maintenance Organization
A list of all branches was requested, but not provided.

Boards of Directors for Meriter Health Services, Inc and Meriter Hospital: See
Exhibits C6-7.

Federal Employer Identification Number- Meriter Hospital: 39-0806367

Attorney:
Leslie A. Sammon
Axley
2 E Mifflin St
Ste 200
Madison WI 53703
608 283 6771

History: No Record for Meriter;

Period of Investigation: 3/27/15 - 5/1/15

Coverage:

Subject firm is engaged in health care services and at subject location in the operation of a 448 bed hospital. Firm employs about (b) (4) individuals in southern Wisconsin, western Illinois, and Iowa. (b) (4) are employed through Meriter of which (b) (4) work for Meriter Hospital and handle products that have moved in interstate commerce (e.g. medical surgical supplies from Owens and Minor in Carol Stream, IL; sutures from Johnson & Johnson in Piscataway, NJ; cardiac rhythm devices from Boston Scientific in Natick, MA; and surgical mesh from Atrium Medical in Hudson, NJ). The ADV for year ending 2015 is projected at (b) (4) and has exceeded the \$500,000 threshold for the last three years. Exact figures were requested, but not provided as they were not readily available to Shana Wuebben, Director of Labor & Human Relations/ EEO Officer.

Enterprise coverage under 3(s)(1)(A) and (B) is applicable for the entire period. See Exhibits C1-10.

Investigation focused on nursing mother provisions of the Fair Labor Standards Act in general and specifically to the complainant working at the subject location.

Shana Wuebben is a responsible person as she set the corporate nursing mother provisions policies.

Des Moines, Iowa is the Main Office District Office. Instructions in WHISARD are to handle locally unless systemic problems exist. See Exhibit D1.

Exemptions:

Section 7(j) applicable to hospital employees, but is utilized only with employees on the straight day shift. (b) (6), (b) (7)(C) is not paid according to 7(j).

Other exemptions were not relevant to this limited investigation and were not explored.

Status of Compliance:

This case was assigned (b) (7)(E) (b) (6), (b) (7)(C) that as a consequence to (b) (6), (b) (7)(C) being denied breaks to express milk; (b) (6), (b) (7)(C) left early from (b) (6), (b) (7)(C) shift (b) (6), (b) (7)(C) first two nights back from leave for the birth of (b) (6), (b) (7)(C) child, resulting in (b) (6), (b) (7)(C) termination. (b) (7)(E) (b) (6), (b) (7)(C) was received from (b) (6), (b) (7)(C)

Section 7(r) non-violation- (b) (6), (b) (7)(C) to work every other weekend. (b) (6), (b) (7)(C) 90 day probationary period was extended 90 days due to training and performance issues. (b) (6), (b) (7)(C) gave birth (b) (6), (b) (7)(C) was not employed long enough to be eligible for FMLA leave. (b) (6), (b) (7)(C) was allowed a leave of 30 days nevertheless. (b) (6), (b) (7)(C) returned to work (b) (6), (b) (7)(C) to (b) (6), (b) (7)(C) normal shift 11 PM to 7 AM. Here is where the employer and employee's stories diverge.

According to (b) (6), (b) (7)(C) first night back (b) (6), (b) (7)(C) was denied leave by Charge Nurse (b) (6), (b) (7)(C), despite asking two times, at 9 PM and around midnight. (b) (6), (b) (7)(C) indicated that (b) (6), (b) (7)(C) then left as (b) (6), (b) (7)(C) breasts were engorged and had planned on (b) (6), (b) (7)(C) daycare provider stopping by to pick up the milk (b) (6), (b) (7)(C) expressed to feed

(b) (6), (b) (7)(C) baby that night. (b) (6), (b) (7)(C) the charge nurse that night, stated that (b) (6), (b) (7)(C) had never before left (b) (6), (b) (7)(C) baby with the sitter (b) (6), (b) (7)(C) used that night and always nursed (b) (6), (b) (7)(C) baby, who had never tried formula before. (b) (6), (b) (7)(C) relayed that although the baby allegedly took the formula (b) (6), (b) (7)(C) had reportedly cried for 5 hours and when asked by (b) (6), (b) (7)(C) what to do had suggested (b) (6), (b) (7)(C) take leave and try to settle (b) (6), (b) (7)(C) baby which (b) (6), (b) (7)(C) claimed (b) (6), (b) (7)(C) said would take about 1.5 hours. (b) (6), (b) (7)(C) purported that (b) (6), (b) (7)(C) had not brought a breast pump nor had left breast milk with the sitter for the baby. (b) (6), (b) (7)(C) shared that (b) (6), (b) (7)(C) may have left the unit to look at the food cart, but that (b) (6), (b) (7)(C) does not believe (b) (6), (b) (7)(C) took nor asked for a real break. (b) (6), (b) (7)(C) expressed that (b) (6), (b) (7)(C) was shocked when (b) (6), (b) (7)(C) never returned from taking care of (b) (6), (b) (7)(C) baby. (b) (6), (b) (7)(C) indicated that (b) (6), (b) (7)(C) never promised to return, but when asked if (b) (6), (b) (7)(C) would be returning had indicated (b) (6), (b) (7)(C) would if (b) (6), (b) (7)(C) could, but that (b) (6), (b) (7)(C) felt it was unlikely.

The second night (b) (6), (b) (7)(C) was the charge nurse and had worked the night before and knew of what had transpired. (b) (6), (b) (7)(C) also indicated that (b) (6), (b) (7)(C) had never left (b) (6), (b) (7)(C) baby with that provider before, was asking what employees did about pumping, and had only in the last few days tried switching (b) (6), (b) (7)(C) baby to a bottle and formula, which led to problems with the baby crying and having problems with the bottle. (b) (6), (b) (7)(C) shared that ultimately (b) (6), (b) (7)(C) had to leave to care for (b) (6), (b) (7)(C) baby the first night, but that (b) (6), (b) (7)(C) was under the impression that (b) (6), (b) (7)(C) would return, which did not happen.

(b) (6), (b) (7)(C) claimed to have checked with (b) (6), (b) (7)(C) the second night to see whether (b) (6), (b) (7)(C) had different plans, which (b) (6), (b) (7)(C) understood (b) (6), (b) (7)(C) to have: baby was with father with breast milk there and plans were to pump during the shift. (b) (6), (b) (7)(C) insisted that (b) (6), (b) (7)(C) had approved a fifteen minute break for (b) (6), (b) (7)(C) followed later by a 30 minute break, from which (b) (6), (b) (7)(C) didn't return and later claimed had been granted authorization from (b) (6), (b) (7)(C) to leave early. (b) (6), (b) (7)(C) alleged that when (b) (6), (b) (7)(C) spoke to (b) (6), (b) (7)(C) later that night (b) (6), (b) (7)(C) claimed (b) (6), (b) (7)(C) was combining (b) (6), (b) (7)(C) lunch with (b) (6), (b) (7)(C) second fifteen minute break and was

pumping and bringing the milk to (b) (6), (b) (7)(C) baby and then returning, which (b) (6), (b) (7)(C) claimed others did. On Saturday night, Meriter claims that while on (b) (6), (b) (7)(C) break and prior to (b) (6), (b) (7)(C) calling (b) (6), (b) (7)(C) contacted the gone line, indicating that (b) (6), (b) (7)(C) was leaving. The call records in Exhibits D30-31 and employee statements support that timeline.

(b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) had requested a break two times before (b) (6), (b) (7)(C) finally approved the third request and that (b) (6), (b) (7)(C) had attempted to get (b) (6), (b) (7)(C) breaks to pump early enough so that there would not be a problem with having to leave. (b) (6), (b) (7)(C) (b) (7)(E) (b) (6), (b) (7)(C) told (b) (6), (b) (7)(C) to take (b) (6), (b) (7)(C) thirty and fifteen minute break together and that before the first thirty minutes were over, (b) (6), (b) (7)(C) had jumped the gun and was calling to see why (b) (6), (b) (7)(C) was not back, had requested a replacement for (b) (6), (b) (7)(C) and that (b) (6), (b) (7)(C) was sent home. (b) (6), (b) (7)(C) indicated that at the meeting with management that followed in the next week, (b) (6), (b) (7)(C) problems with expressing milk on (b) (6), (b) (7)(C) shifts were discussed, however, that after the meeting, Meriter still decided to terminate (b) (6), (b) (7)(C) employment. These events occurred at the time (b) (6), (b) (7)(C) second probationary period was to be evaluated and (b) (6), (b) (7)(C) again fared poorly on the review in Exhibit D24. See also Exhibits B1-7 and D 16-22, 25-28, 30-31, and 35.

Meriter management and employees other than (b) (6), (b) (7)(C) indicated that Meriter provided nursing mother breaks and that employees were able to take those breaks as desired. Employees indicated they all took care of each other and made sure the breaks could be taken. Others on the unit had at times asked for and taken nursing mother breaks without any problems, including (b) (6), (b) (7)(C) according to (b) (6), (b) (7)(C)

Additionally, there were PRN staff, the nursing assistant coordinator, and others on site who could come and replace nurses and aides who needed to break and an aide might not need to be replaced for a break if there were enough nurses. Additionally, staff on call, including the nursing director, could relieve employees if need be. Employees might not break as soon as they should to express milk by their own choosing.

Meriter has several options for where employees can express milk, of which a bathroom is not one. Locations include conference rooms, small break rooms, and three rooms designed and available exclusively for expressing milk complete with sinks and locks on the doors. These options were viewed by this Wage Hour Investigator on a tour during the opening conference and were more than adequate.

Meriter cited performance and other issues for the termination. See attendance record showing 4 points accumulated which was sufficient to terminate a probationary employee in Exhibit D3 per attendance policy in Exhibit D6.

(b) (6), (b) (7)(C) initial probationary period was extended 60 days due to issues in all areas measured per Exhibit D8

Problems were documented in Exhibits D10-13 & 15.

It is important to note that despite being an assertive person per all accounts, (b) (6), (b) (7)(C) did not contact Wage Hour again after a message was left notifying

(b) (6), (b) (7)(E)

Section 11 Violation – Registered nurses did not always take their lunch break, but did not indicate in the records that they did not take their break and therefore, the lunch break was deducted from the hours for which they were paid. Employees are instructed to indicate when they take no lunch so that they can be paid straight through their shift. Most of the staff is less than full-time and would not go into overtime with adding the hours in and still were paid above the minimum wage even with the extra hours. See Exhibit B7.

Section 12 non-Violation – No violation was disclosed in this limited investigation focusing on the nursing mother provisions.

Disposition:

Final conference was held on 5/1/15 at the establishment with Shana Wuebben, Director of Labor & Human Relations/ EEO Officer; Kris Holmes, Director, Medical/

Surgical Nursing; and (b) (6), (b) (7)(C), Investigator, attending. Topics discussed in detail include nursing mother provisions, potential remedies of violations, lack of clarity of what happened, frequency of combining rest and lunch breaks, advisability of educating all hospital employees on 30 and 15 minute break policies (to include which can be skipped, whether employees can leave during breaks, required notification to supervisor before breaks), variation in break schedules between shifts, use of gone line, and missed lunches.

It was recommended that the hospital record breaks in some fashion to prove that they are taken for purposes of the nursing mother provisions and to better manage hours /overtime for nurses. Another suggestion was to discuss the nursing mother provisions including a tour of breaks rooms prior to an employee using leave for the birth of a child (or even upon return) to facilitate compliance. Wuebben was open to exploring both suggestions.

Wuebben was given copies of the following publications on 4/23/15: Handy Reference Guide to the Fair Labor Standards Act; Fact sheets 44, 73, 77A, 28.28A, 28D, 21, and 31; CL 101; FAQ-NM; 2 employee cards – nursing mother provisions; Regulations 825, and posters 1088, 1089, 1420, and 1462.

There is no pending 16(b) action per the firm.

Wuebben promised continued compliance with the nursing mother provisions. She was informed that (b) (7)(E) it was not totally clear what occurred those nights and that (b) (6), (b) (7)(C) could still pursue (b) (6), (b) (7) private rights.

(b) (6), (b) (7)(C) was notified (b) (7)(E) by voice mail on 5/1/15. (b) (6), (b) (7) did not call this investigator back with any questions, but had been notified of this likely result previously by telephone conversation.

Attorney Leslie Sammon contacted this investigator for information in regard to the findings and Freedom Of Information Act procedures.

Recommend administrative closing.

5/22/15

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1758491 Originating District: St. Louis MO District Office
Local Filing Number: 2015-340-13539 Investigating District: St. Louis MO District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 04/20/2015
Assignment Date: 04/20/2015

Employer Information

Trade Name: United States Postal Service
Address: 1720 Market St

Saint Louis, MO 63155

Legal Name: United States Postal Service
EIN: 13-5641517
County: St Louis City
NAICS Code: 491110
No. Of Employees: 50

Investigation Information

Period Investigated From: 01/12/2015 BNPI:
To: 04/23/2015 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

Total Violations Under FLSNM: 3 \$0.00

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

Cov ER, 3s1C public agency. (b) (7)(E) ER failed to provide adequate space & reasonable time to express breast milk as well as retaliation for needing more time than bargained by union. LRS S Mercado ATC/ATR. Pubs: FS #73, Break Time for NM. Rec conc.

WHI Signature: _____ Date: 04/28/2015

Reviewed By: _____ Date: _____

FLSA NARRATIVE
Break Time for Nursing Mothers (FSNM)

Case ID: 1758491, 2015-340-13539

United States Postal Service
170 Market St
St Louis, MO 63155
EIN: 13-5641517

CP: Susanne Mercado, Labor Relations Specialist
Tel: 651/406-1037
E-mail: Susanne.d.mercado@usps.gov

COVERAGE:

Subject firm is a public agency and the division in question is an Accounting Center. As such, 3(s)(1)(C) coverage exists.

Period of investigation: 10/21/2014 to 4/23/15.

EXEMPTIONS:

13(a)(1) exemptions were not claimed but do not apply.

STATUS OF COMPLIANCE:

(b) (6), (b) (7)(C) violations of the FSNM. (b) (6), (b) (7)(C) gave birth (b) (7)(E) and returned to work after maternity leave. (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) needs to express breast milk three times throughout (b) (6), (b) (7)(C) work day and that it reasonably takes a little more than 20 minutes to do so, along with rinsing the breast pump after use, each time. Upon return to work (b) (6), (b) (7)(C) employer originally allowed (b) (6), (b) (7)(C) only 15 minutes, the usual break, to express breast milk. Because this was not enough time, (b) (6), (b) (7)(C) negotiated 20 minutes through (b) (6), (b) (7)(C) union. Recently, (b) (6), (b) (7)(C) direct supervisor, (b) (6), (b) (7)(C), began to mention that (b) (6), (b) (7)(C) was exceeding this 20 minutes. In addition, (b) (6), (b) (7)(C) stated that the space provided for expressing breast milk was not free from intrusion by co-workers.

PRIOR HISTORY: None under the FSNM.

MODO: Baltimore, MD DO.

DISPOSITION:

On 4/21/15 contact was made with the Great Lakes Area District Labor Relations office in St Louis, MO. Labor Relations Specialists (LRS) Dan Muskopf (314/436-4180) explained that Accounting Centers are overseen by different LRSS and referred this WHI to LRS Susanne Mercado in the National Headquarters (651/406-1037). Mr. Muskopf was ignorant of the requirements of the FSNM so FS #73 was e-mailed to him.

On 4/21/15 contact was made with Ms. Mercado via phone. Ms. Mercado immediately agreed to compliance with the FSNM at all 4 of the Accounting Centers she oversees, contacting the Market Street site's management team that afternoon. She has confirmed that –

- the lock on the door to the conference room utilized by (b) (6), (b) (7)(C) was functioning correctly.
- a “Do Not Disturb” sign has been placed on the door to the conference room used.
- (b) (6), (b) (7)(C) supervisors have agreed to provide a reasonable amount of time and that it may exceed 20 minutes,
- any previous private discussions with (b) (6), (b) (7)(C) regarding excessive break time will be expunged from (b) (6), (b) (7)(C) records.
- Ms. Mercado had shared and reviewed FS #73 with the Management Team at the site.

On 4/23/15 (b) (6), (b) (7)(C) was advised of the outcome by phone.

Recommend conclusion.

Pubs: FS #73 Break Time for Nursing Mothers.

(b) (6), (b) (7)(C),
Wage & Hour Investigator
4/23/15

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1762785 Originating District: Des Moines IA District Office
Local Filing Number: 2015-180-14310 Investigating District: Des Moines IA District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 06/08/2015
Assignment Date: 06/08/2015

Employer Information

Trade Name: SouthRoads Dental Legal Name: Dr. Robert F. Colwell Jr., DDS
Address: 712 Fortcrook Rd. North EIN: 20-1690679
Bellevue, NE68005 County: Sarpy
NAICS Code: 621210
No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 01/05/2015 BNPI:
To: 06/09/2015 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: ☐ Future Compliance Agreed: ☐
Compliance Status: Compliance (no violations found) Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

WHISARD Compliance Action Report

Conclusions & Recommendations:

4 hours; ent cov; (b) (7)(E) the firm did not follow the nursing mother law by giving (b) (6), time and a place to pump; FLSAM coverage was not est as firm is less than 20 ee's and may have a hardship with meeting this req; owner Dr. Colwell said he would try to give time and place for (b) (6) if staffing needs allow; FC 6-9-15; pubs HRG; rec admin close.

WHI Signature: _____ Date: 06/09/2015

Reviewed By: _____ Date: _____

FLSA NARRATIVE
Case File Number: 1762785

Southroads Dental
712 Fortcrook Rd. North
Bellevue, NE 68005

EIN: 20-1690679

Point of Contact:

Dr. Robert Colwell, owner
515-208-6415

Case Assignment Information:

This (b) (7)(E) case assignment (b) (7)(E) (b) (6), (b) (7)(C) employer was not following the requirements of the nursing mother law. (b) (6), (b) (7)(C) (b) (7) the firm would not give (b) (6), (b) (7)(C) adequate time to pump, and an adequate space to pump when given the opportunity.

Coverage:

Subject firm is a dental office. The firm has two locations. The firm appears to meet the enterprise coverage threshold of making more than \$500,000 per year and having employees engaged in interstate commerce (swiping credit cards).

The firm has less than (b) (6), (b) (7)(C) employees and the Owner Dr. Robert Colwell advised that he would have a hardship of meeting the requirements on some occasions. Dr. Colwell advised that he may only have (b) (6), (b) (7)(C) and one other office employee at one time where (b) (6), (b) (7)(C) would not be able to leave during a procedure. It was undetermined if coverage (FLSAM) was present for (b) (6), (b) (7)(C) to take “nursing mother” breaks.

Disposition:

On June 9, 2015, WHI (b) (6), (b) (7)(C) spoke with the Owner Dr. Robert Colwell. Dr. Colwell advised that his office has tried to accommodate for (b) (6), (b) (7)(C) to take time to pump when staffing levels permit. Dr. Colwell stated the only reason this is an issue is (b) (6), (b) (7)(C) was trying to cause problems after (b) (6), (b) (7)(C) felt (b) (6), (b) (7)(C) was treated unfairly for (b) (6), (b) (7)(C) health insurance costs after maternity leave. Dr. Colwell said that he would continue to allow (b) (6), (b) (7)(C) to take (b) (6), (b) (7)(C) breaks when they have another dual staff member that could step in and assist with procedures, or (b) (6), (b) (7)(C) could

wait until free time is available in between patients. Dr. Colwell stated (b) (6), (b) (7)(C) would need to give some advanced warning before waiting until the middle of a procedure to advise that (b) (6), (b) (7)(C) needed to immediately leave to take a break to pump. Dr. Colwell stated that it appears (b) (6), (b) (7)(C) purposely waits until the worst possible time to say (b) (6), (b) (7)(C) needs to take a break to make it difficult on everyone in the office to retaliate for (b) (6), (b) (7)(C) insurance problems.

Dr. Colwell stated he checked with his attorneys, and they advised him that he may not even have to allow this break, because he does have a hardship (not enough staff to treat the patients when (b) (6), (b) (7)(C) wants to take these breaks). Dr. Colwell advised that even though he doesn't have to give (b) (6), (b) (7)(C) this break, he will still continue to give (b) (6), (b) (7)(C) the opportunity to take time to pump. Dr. Colwell also advised that (b) (6), (b) (7)(C) can either go in to the administrator's office or the break room to pump, and they have a sign to put on the door for others not to interrupt, which has been the ongoing practice.

(b) (6), (b) (7)(C) Notification: WHI (b) (6), (b) (7)(C) notified (b) (6), (b) (7)(C) on June 9, 2015 by phone of the outcome. WHI (b) (6), (b) (7)(C) advised (b) (6), (b) (7)(C) that coverage was not established and it appeared the firm could have a hardship of allowing (b) (6), (b) (7)(C) to take these breaks. (b) (6), (b) (7)(C) was advised that Dr. Colwell agreed to continue to try to get (b) (6), (b) (7)(C) time to take breaks to pump, along with giving (b) (6), (b) (7)(C) the private space to do it, even if he is not required by law. (b) (6), (b) (7)(C) notified WHI (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) had already put in (b) (6), (b) (7)(C) two week notice, so no further assistance was needed.

Publications provided:

HRG. WHI (b) (6), (b) (7)(C) referred the employer to the USDOL website for information on the FLSA regulations and additional fact sheets.

Recommendations:

WHI (b) (6), (b) (7)(C) recommends that the case (b) (7)(E) be administratively closed.

(b) (6), (b) (7)(C)

Wage & Hour Investigator
01/16/2019

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1762983 Originating District: Kansas City KS District Office
Local Filing Number: 2015-221-14552 Investigating District: Kansas City KS District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 06/10/2015
Assignment Date: 06/10/2015

Employer Information

Trade Name: Western Missouri Medical Center Legal Name: Western Missouri Medical Center
Address: 403 Burkarth Road EIN: 44-0665266
County: Johnson
NAICS Code: 622110
Warrensburg, MO 64093 No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 11/01/2014 BNPI:
To: 06/13/2015 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Compliance (no violations found) Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

8.25hrs. 3s1b ent cov. Case limited to FLSA sec 7r nursing mothers. No violations found. ER ATFC with the act. Recommend admin closing file with no further action. Pubs: HRG, FS 43, FS 73, FS 28D

WHI Signature: _____ Date: 07/06/2015

Reviewed By: _____ Date: _____

Western Missouri Medical Center
403 Burkarth Rd
Warrensburg, MO 64093
Telephone: 660-262-4732
FEIN: 44-0665266
DUNS Number: N/A
Cage Code: N/A

FLSANM Narrative

Reason for case assignment: This case was assigned (b) (7)(E) .

Coverage

Subject firm is an acute care hospital. Operations began in 1963 as Johnson County Memorial Hospital. The firm employs (b) (4) employees. Dennis Long, Human Resources Director, was the point of contact for this investigation. He made decisions regarding future compliance and is considered the 3(d) employer.

Enterprise coverage under Section 3(s)(1)(B) is applicable as the firm is engaged in the operation of a hospital. A limited FLSANM investigation was conducted and limited to (b) (6), (b) (7)(C).

The investigative period is 11/01/2014 through 06/13/2015.

Pay periods are bi-weekly. The workweek ends on Saturday. No payroll or time records were reviewed as this (b) (7)(E) was limited to the nursing mothers' provisions of the Act.

Contingent workers: None.

Federal contracts within last three years: None

MODO: A MODO record was not established as there are no other locations.

16(b): Dennis Long was not aware of any pending 16(b) actions.

Exemptions:

13(a)(1)

541.100/.200/.300 – Not applicable:

██████████ is a PRN registered nurse and works 0 to 3 days per week. ██████████ is paid an hourly rate of ██████████ per hour.

Status of Compliance:

██████████ (b) (6), (b) (7)(D) Information: ██████████ (b) (6), (b) (7)(C) ██████████ (b) (7)(E) ██████████ (b) (6), (b) (7)(C) is not provided with sufficient space for expressing milk. ██████████ (b) (6), (b) (7)(C) also ██████████ (b) (7)(E) discrimination/harassment by other employees. ██████████ (b) (7)(E) ██████████

Section 207(r)(1)(A)- Time of Break : No violations found. On average, ██████████ (b) (6), (b) (7)(C) received 3 to 4 breaks, ranging from 15 – 30 minutes for the purpose of retrieving equipment (breast pump), expressing and storing milk.

Section 207(r)(1)(B) – Place of Break: No violations found. ██████████ (b) (6), (b) (7)(C) ██████████ (b) (7)(E) ██████████ (b) (6), (b) (7)(C) had to create ██████████ (b) (6), (b) (7)(C) own space to express milk. The ER stated that although they do not have a dedicated space, ██████████ (b) (6), (b) (7)(C) as well as other nursing mothers is allowed to use unoccupied patient rooms for the purpose of expressing milk. The firm also provides a full sized refrigerator that can be used to store milk.

Section 207(r)(2) – Compensation of Break Time: No violations found. The employee was paid for all NM breaks.

Section 207(r)(3) – Undue Hardship: None considered as the firm employs more than 50 employees and the firm did not claim any hardships.

Disposition:

WHI ██████████ (b) (6), (b) (7)(C) held a final conference by phone on 06/30/2015 with Dennis Long, Human Resources Director, and ██████████ (b) (6), (b) (7)(C) Unit Director, Rene Twenter. A comprehensive explanation of the break time for Nursing Mothers provision was explained.

Specifically regarding (b) (6), (b) (7)(C), Ms. Twenter stated that (b) (6), (b) (7)(C) has refused job assignments and is dictating (b) (6), patient load based on (b) (6), nursing needs. (b) (6), believes other employees made negative remarks regarding (b) (6), refusal to accept job assignments rather than (b) (6), nursing needs. WHI (b) (6), (b) (7)(C) explained that NM's are not entitled to any other benefits or conditions above the requirements of the NM Act. WHI (b) (6), (b) (7)(C) also cautioned that negative and harassing comments by other employees could be seen a form discrimination.

Mr. Long and Ms. Twenter stated the following:

The firm is fully committed to compliance with the Act. In fact, they are working towards the requirements of becoming a designated breastfeeding friendly workplace.

Employees, when available, may use hospital breast pumps for expressing milk.

Currently, they do not have a dedicated space for nursing mothers; however, they are in the process of applying for grants to build dedicated spaces. Until then, they will continue with the use of unoccupied patient rooms for the purpose of expressing milk. They will also consider the use of locks and/or signs to further ensure the rooms are free from intrusion.

They will also consider creating a formal policy regarding nursing mothers to ensure that all employees are informed of NM's rights under the Act.

They will be sure to communicate NM's needs with employees regularly and as often as necessary.

Mr. Long has agreed to continued compliance with the Act and will contact WHI (b) (6), (b) (7)(C) should any further questions or issues arise.

Publications: HRG, FS 43, FS 73, FS 28D

(b) (6), (b) (7)(C) Notification: (b) (6), (b) (7)(C) was advised of the results by phone 06/30/2015.

Recommendations:

- I. Recommend administratively closing this file with no further action.
- II. Correspondence should be sent to:

Dennis Long, Human Resources Director
Western Missouri Medical Center
403 Burkarth Rd
Warrensburg, MO 64093

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1763599 Originating District: Columbus OH District Office
Local Filing Number: 2015-163-14868 Investigating District: Columbus OH District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 06/17/2015
Assignment Date: 06/17/2015

Employer Information

Trade Name: Mercury Plastics, Inc.
Address: 15760 Madison Road

Middlefield, OH44062

Legal Name: Mercury Plastics, Inc.
EIN: 34-0962146
County: Geauga
NAICS Code: 333511
No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 06/15/2013 BNPI:
To: 06/13/2015 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Compliance (no violations found) Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

FMLA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FMLA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

13.5 hrs. Sec 3(s)(1)(A) FLSNM. (b) (6), (b) (7)(C) (b) (7)(E) (b) (6), (b) (7) ER wouldn't allow sufficient time for (b) (6), (b) (7) to express breast milk, that (b) (6), (b) (7) ER would take away (b) (6), (b) (7) perfect attendance bonus for exceeding the allotted break time & the space wasn't adequate. Met w/ER's Reps = Paul Sharron (HR) & Chuck Hayes (GM). (b) (7) Pubs: F SH #73. Rec admin closing.

WHI Signature: _____ Date: 07/06/2015

Reviewed By: _____ Date: _____

Mercury Plastics, Inc.
d.b.a.: Mercury Plastics, Inc.
15760 Madison Road
Middlefield, OH 44062
Phone: (440) 632-5281
Fax: (440) 632-5606
EIN#: 34-0962146

I. COVERAGE:

1This establishment is a manufacturer of custom extrusion and molding. The manufacture parts for commercial use in appliances and for plumbing applications. They incorporated in Ohio in 1964. All EEs receive and use a wide range of supplies that have moved in interstate commerce (i.e., Plastic resins from New Jersey.) In addition, their products are shipped worldwide. The firm employs on average (b) (4) individuals throughout the enterprise. The ADV for this S-corporation has averaged (b) (4) each year for the last three calendar years so Enterprise Coverage under Section 3(s)(1)(A) applies to each employee for the investigation period. The investigation period for this limited investigation is 04/21/2015 to 06/13/2015.

2The principal of the firm is William Rowley, who is President and has (b) (4) ownership of the business.

33(d) ER:

4In addition to William Rowley (President and owner), Paul E. Sharron (Human Resources Manager) and Chuck Hayes (COO and General Manager) are recognized as responsible parties for the business. They have the authority to interview, hire, discipline and terminate the EEs. They approve requests for leave. They are amongst the key individuals who set the terms and conditions of employment as well as assigning work. They are actively involved in the financial and business decisions.

I. EXEMPTIONS:

113(a)1: The Exempt status of any EE was not granted or denied. This investigation was limited to the "C" which was for FLSNM.

I. STATUS OF COMPLIANCE:

1History: None.

(b) (7)(E) Data: (b) (6), (b) (7)(C), initially (b) (7)(E) (b) (6), ER did not allow (b) (6), reasonable time to express breast milk as needed. (b) (6), later made other (b) (7)(E) which are discussed in the Disposition Section. This investigation was limited to (b) (6), (b) (7)(C). The nursing mother (b) (7)(E) (b) (6) is not due any BWs. (b) (6) was notified of investigative findings via phone on 06/30/15 with a VMS. (b) (6), (b) (6) did not call back to discuss.

3Section 6 – MW:

4No violations were noted.

5Section 7 – Overtime:

6No violations were noted.

7Section 11 – Record Keeping:

8No violations noted.

9The review of the time records for this limited investigation revealed that EEs are required to clock in upon arriving and beginning work and clock out at the end of the day when they completed their work. The EEs were not required to clock out/in for each break and all lunches since that time is paid. EEs were simply required to show a daily total for the break time taken on their job cards. (b) (6), (b) (7)(C) confirmed that the daily totals for the breaks taken and the daily total for hours worked were accurately recorded.

10Section 12 – Child Labor:

11The ER stated that they employed minors who were 17 years old to perform non-HO duties, such as packing boxes for shipments.

I. DISPOSITION:

The IC was held at the establishment on 06/18/15. Present were the ER's Reps = Paul Sharron (HR Manager), Chuck Hayes (COO and General Manager) and WHI (b) (6), (b) (7)(C). Coverage, labor laws, and (b) (7)(E) were discussed. The ER's break policy, RK and nursing mother policy were discussed with them in detail before WHI (b) (6), (b) (7)(C) left the establishment.

The ER normally operates two different shifts: 8 hours per day and 12 hours per day. The EEs who are scheduled to work 8 hours per day are allowed up to 50 minutes per shift to use as they choose for paid break time. The EEs who are scheduled to work 12 hours per day are allowed up to 70 minutes per shift to use as they choose for paid break time. The EEs may split-up the break time as they choose, but typically, the EEs go on break as a group and use the leave as follows:

- I. 8 Hour Shift:
 - 1 break for 10 minutes;
 - 30 minutes for lunch; and
 - 1 break for 10 minutes.
- II. 12 Hour Shift:
 - 3 breaks of 10 minutes each;
 - 30 minutes for lunch; and
 - 1 break for 10 minutes.

The EEs are not required to clock out/in for their breaks. They simply track the time on their time card / job cards and show a total amount of break time taken for the day at the end of the day.

Per the ER, providing breaks to his EEs including (b) (6), (b) (7)(C) wasn't a problem. Upon (b) (6), (b) (7)(C) return to work (b) (6), (b) (7)(C) from maternity leave, (b) (6), (b) (7)(C) resumed (b) (6), (b) (7)(C) previous work and break schedule (12 hour shifts with 70 minutes in paid breaks). In addition, (b) (6), (b) (7)(C) began taking multiple breaks per shift to express breast milk. (b) (6), (b) (7)(C) initially was taking breaks on the same schedule as (b) (6), (b) (7)(C) newborn (b) (6), (b) (7)(C) was feeding when (b) (6), (b) (7)(C) was at home so (b) (6), (b) (7)(C) was pumping approximately every two hours, with each pumping session lasting about 30 minutes. (b) (6), (b) (7)(C) followed this schedule for approximately the first week that (b) (6), (b) (7)(C) was back to work. (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) was told by HR Manager Paul Sharron that (b) (6), (b) (7)(C) was pumping too much as missing too much work. (b) (6), (b) (7)(C) stated that he informed (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) had to cut back since 3 hours of pumping time was too much per shift. (b) (6), (b) (7)(C) also (b) (7)(E) that he told (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) would have to make up the time that (b) (6), (b) (7)(C) missed from (b) (6), (b) (7)(C) 2 hour shift, that (b) (6), (b) (7)(C) might not get paid for the time that (b) (6), (b) (7)(C) took in excess of the 70 minutes of paid breaks, and that (b) (6), (b) (7)(C) might lose the perfect attendance bonus if (b) (6), (b) (7)(C) continued to take more than the 70 minutes of allotted paid break time. (b) (6), (b) (7)(C) (b) (7)(E) these statements were violations of (b) (6), (b) (7)(C) rights under FLSNM.

With regards to (b) (6), (b) (7)(C) (b) (7)(E) ER would not allow (b) (6), (b) (7)(C) sufficient time to express breast milk, the ERs Reps stated that (b) (6), (b) (7)(C) was advised after (b) (6), (b) (7)(C) gave notice to them that (b) (6), (b) (7)(C) would be taking time to express breast milk that (b) (6), (b) (7)(C) could still have (b) (6), (b) (7)(C) regular breaks (70 minutes) as paid but any additional time beyond the 70 minutes would not be paid. The ER's Reps also stated that they've never had a limit on the number of breaks that could be taken as long as they didn't exceed the allotted time (50 minutes or 70 minutes) otherwise they would not be paid. (b) (6), (b) (7)(C) (b) (7)(E)

(b) (6), (b) (7)(C) also (b) (7)(E) nursing mothers did not receive paid breaks while other breaks were paid. (b) (7)(E) (b) (6), (b) (7)(C). The ER did not violate the regulations for breaks for nursing mothers under the FLSA. (b) (6), (b) (7)(C) like other EEs, was allowed up to 70 minutes in paid break time. (b) (6), (b) (7)(C) chose to use the 70 minutes of paid break time on the same schedule as (b) (6), (b) (7)(C) previously used with (b) (6), (b) (7)(C) co-workers. In addition, (b) (6), (b) (7)(C) took time to express breast milk. (b) (6), (b) (7)(C) initially was pumping every 2 hours for approximately 30 minutes each time. This then changed to pumping 3 times per shift for 30 minutes each time. The ER advised (b) (6), (b) (7)(C) that these additional breaks may not be paid.

ERs are not required under the FLSA to compensate nursing mothers for breaks taken for the purpose of expressing milk. However, where ERs already provide compensated breaks, an EE who uses that break time to express milk must be compensated in the same way that other EEs are compensated for break time. The frequency of the breaks needed to express milk as well as the duration of each break will likely vary.

In addition, (b) (6), (b) (7)(C) stated and the ER confirmed that they advised her (b) (6), (b) (7)(C) they may require (b) (6), (b) (7)(C) to make up the additional time that (b) (6), (b) (7)(C) is not working (b) (6), (b) (7)(C) scheduled hours (12 hour shift) due to the additional break time. (b) (6), (b) (7)(C) also stated and the ER confirmed that they informed (b) (6), (b) (7)(C) that taking the additional breaks could cause (b) (6), (b) (7)(C) to lose (b) (6), (b) (7)(C) perfect attendance bonus. A review of the ER's bonus policy indicated that the bonus was based on perfect attendance which they defined as the EE work all scheduled hours, including scheduled mandatory overtime hours. The ER stated that if the EE was taking additional breaks (unpaid), then he/she was not working all their scheduled hours. (b) (6), (b) (7)(C) (b) (7)(E)

In addition to the law requiring ERs to provide "reasonable break time for an EE to express breast milk for (b) (6), (b) (7)(C) nursing child for 1 year after the child's birth each time such EE has need to express the milk." ERs are also required to provide a "place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an EE to express breast milk." (b) (6), (b) (7)(C) (b) (7)(E) although (b) (6), (b) (7)(C) ER provided EEs with a secured private office and refrigerator to use, (b) (6), (b) (7)(C) was not satisfied with it. (b) (6), (b) (7)(C) was troubled by the location of the dedicated office – it was located at the back of the building near maintenance. (b) (6), (b) (7)(C) stated that it was private but not private enough. No violation for the dedicated area despite (b) (6), (b) (7)(C) opinion.

The pre-FC was also held on 06/18/15 with the ER. Present for pre-FC were the ER's Reps= Paul Sharron (HR Manager), Chuck Hayes (COO and General Manager) and WHI (b) (6), (b) (7)(C). WHI (b) (6), (b) (7)(C) reviewed the laws, (b) (7)(E), the ER's policies and compliance with the ER. The ER's Reps were advised that future investigations could result in CMP's and/or news release.

The FC was held via phone with the ER's Rep = Paul Sharron (HR Manager) and WHI (b) (6), (b) (7)(C). The ER's was advised that (b) (6), (b) (7)(C) (b) (7)(E). The ER agreed to continue to comply with all areas of the law.

Publications provided: Fact Sheet #73.

I recommend administratively closing this case.

(b) (6), (b) (7)(C)

WHI

07/01/15

WHISARD Compliance Action Report

U.S. Department of Labor Wage and Hour Division

Case ID: 1765287 Originating District: Indianapolis IN District Office
Local Filing Number: 2015-204-08953 Investigating District: Indianapolis IN District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 07/07/2015
Assignment Date: 07/27/2015

Employer Information

Trade Name: Walmart Supercenter Store #3436 Legal Name: WAL-MART STORES INC
Address: 700 West Ireland Road EIN: 71-0862119
County: St Joseph
NAICS Code: 452910
South Bend, IN46614 No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 08/21/2013 BNPI:
To: 08/20/2015 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	2	\$0.00	\$0.00	\$0.00	\$0.00	

Total Violations Under FLSNM: 4 \$0.00

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

FLSNM limited Investigation, 3(s)(1)(A) coverage, +50 EEs. ^(b) gave (b) (7)(E). Sec. 207 violations: ER failed to provide adequate space to express milk, space was not shielded from view or interruption. ^(b) and another EE were recorded on surveillance camera at least 5 times pumping milk. Other space was interrupted by Mgrs. ER has since provided a new space (compliance) ER ATC. Rec. close (b) (7)(E)

WHI Signature: _____ Date: 08/28/2015

Reviewed By: _____ Date: _____

FLSNM NARRATIVE

Wal-Mart Stores, Inc.
D/b/a Wal-Mart Supercenter
700 West Ireland Road
South Bend, IN 46614

Case ID: 1765287
FEIN: 71-8062119

Contact Person/s:

Scott Ruoff
Store Manager
Phone(store): (574) 299-1284

History:

There is significant history with the numerous establishments within the enterprise. Given the type of investigation being limited to Fair Labor Standards Act Nursing Mothers provisions, History was limited to the same type of investigations. History included 1 other investigation case ID 1646042 (see Exhibit D-5a to D-5c); 03/05/2012 Failure to provide adequate space, employer agreed to future compliance.

Background:

Walmart is a retail store in business since 1962. The company started in Rogers, Arkansas, and is headquartered in Bentonville, AR. They specialize in selling goods at both physical store locations and on the internet.

Reason for investigation:

This limited investigation was initiated based on (b) (7)(E) (b) (6), (b) (7)(C)

(b) (7)(E)
Walmart Supercenter failed to provide adequate space to express breast milk, as well as failed to provide reasonable break time to express breast milk. (Refer to WH-3 (b) (7)(E)).

(b) (7)(E)

(b) (6), (b) (7)(C) (b) (7)(E)

COVERAGE

Enterprise Coverage:

Section 203(s)(1)(a) of the FLSA is applicable throughout the entire investigative period. The employer grosses over \$500,000 annually (\$482.2 billion in fiscal year 2015 according to company website), and has two (2) or more employees (2.2 million employees worldwide according to website) engaged in interstate commerce in various ways (see Exhibit C-2).

Section 207(r) of the FLSA is applicable to the employer. The employer has (b) (4) employees at the single establishment (2.2 million total).

Period of Investigation:

This investigation was limited to (b) (6), (b) (7)(C) (b) (7)(E) the period of investigation included: August 21, 2013 to August 20, 2015

MODO:

The subject firm is a multi-unit employer headquartered in Bentonville, Arkansas. (b) (7)(E)

Employee Eligibility:

(b) (6), (b) (7)(C) child has not reached age one (1). (b) (6), (b) (7)(E) works for a covered employer who has more than 50 employees. No undue hardship exists.

EXEMPTIONS

Exemptions were not investigated as the investigation was limited to (b) (6), (b) (7)(C) (b) (7)(E) related to the Nursing Mothers Provisions (Section 207(r)) of the Fair Labor Standards Act.

No current employees are exempt from Section 207(r), the employer is covered and has more than 50 employees.

STATUS OF COMPLIANCE

Section 207(r)(1)(B):

The employer failed to provide ...a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public... from the period of May, 2015 through August 11, 2015.

The employer first used a conference room as a space for breaks for nursing mothers prior to May, 2015 (see Exhibits E-1a, D-6a to D-6d). The conference room was an adequate space and met the requirements laid out in section 207(r). The office has a locking door. The office has two (2) large windows; one on the door and one on wall. The employer had curtains that covered both windows. Sometime in the middle of May (exact date unknown) (b) (6), (b) (7)(C), Market Manager (no longer with company) made the decision to turn that conference room into a coat room and no longer allow current/future nursing mothers to use the room. The change took place with no alternate plans for proper placement in any new break room for nursing mothers within the store.

The next space that the employer provided was store manager, Scott Ruoff's office/Manager's office (see Exhibits E-1a, D-7a to D-7g). This office was used for 2 months and the employees were interrupted by managers on occasion. The office has two separate spaces. The main entrance to the office has a locking door. The second space (Mr. Ruoff's office) does not have a locking door. There is one window in the office it is on the main entrance door. The employer had a strip of cardboard that was used to cover that window.

The third space that the employer provided was the invoice office. This office was used by 2 employees. (b) (6), (b) (7)(C) used the office a total of 5 times to express milk. The invoice office has an active and

recording camera inside. WHI (b) (6), (b) (7)(C) had an interview with (b) (6), (b) (7)(C) on 08/20/2015 (see exhibit B-2a-2b). During the interview (b) (6), (b) (7)(C) showed WHI (b) (6), (b) (7)(C) the camera's view (see exhibit E-1b). The active and recording camera had a clear view of Nursing Mother employees using the room to express milk. The combination of (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C), Co-Manager, put a stop to the use of that room as soon as they became aware that the room was being used. A clear criminal intent by any of the management to directly invade the employee's privacy and obtain footage from the cameras was not discovered during the investigation.

The fourth and final space that the employer provided is a fitting room. This fitting room has a locking door, it is free from interruption from both the public and co-workers, it is not a bathroom, and it shielded from view (see Exhibits E-1c, D-9a to D-9d). There is only one key for each of the 3 female fitting rooms, when a nursing mother employee takes a break in the space they are handed the key from the fitting room associate that is present at the location during that associate's entire shift. There are no duplicate keys. The fitting room is compliant with the regulations provided in section 207(r) of the Fair Labor Standards Act.

Section 207(r)(1)(A):

During the periods of time when Store Manager, Scott Ruoff needed his office (second space) for conference calls, etc., the Nursing Mother employees were often told (by Scott) to wait or suggested to use either the invoice office (after knowledge of the camera's presence) or the family restroom in the store. These periods of time (waiting to use manager's/Scott's office) resulted in a failure to provide reasonable break times for nursing mothers.

DISPOSITON

A final conference was held via telephone on 8/25/2015 present were, Store Manager Scott Ruoff and WHI (b) (6), (b) (7)(C) representing the Department of Labor Wage and Hour Division. The investigator explained coverage, and that Wal-Mart Supercenter Store #3436 met the coverage aspects of Section 207(r) of the Fair Labor Standards Act.

The investigator discussed the nursing mother provisions laid out in Section 207(r) of the Fair Labor Standards Act, including the violations that had occurred at the establishment.

Employer's reason/s for violations:

The investigator asked the employer's reason for the violations. Mr. Ruoff stated that the employer's first provide break space (conference room) was turned into a coat room from the direction of Market Management to allow for more room in the employee lounge area adjacent to the conference room. Mr. Ruoff stated that he and management failed to provide adequate space because of, what he considered a lack of adequate space available at the time; and that he was unaware that the invoice office had a camera present. Mr. Ruoff stated that the fitting room became an option later to avoid any possible issues and to attempt to comply with the FLSA's nursing mother's requirements.

The employer is currently in compliance with Section 207(r), the space that is provided to nursing mother employees is shielded from view, no cameras can view the space from above, it is free from intrusion from both the public and co-workers, it has a locking door, and it is not a bathroom. The investigator explained that if the fitting room was going to be utilized as a space for nursing mothers, that the stall reserved for the use of breaks for nursing mothers should not be utilized by the public during the hours that nursing mothers are working. Mr. Ruoff claimed to understand and agreed to future compliance. Mr. Ruoff stated that the employees will not be retaliated against. Mr. Ruoff agreed to future compliance by ensuring that the current space as well as any future space will meet the requirements laid out in Section 207(r) of the FLSA. Mr. Ruoff stated further that he had contacted the Wal-Mart corporate office for guidance on Section 207(r) and was provided the guidance necessary to continue to comply.

The investigator discussed the child labor provisions of the FLSA. Mr. Ruoff claimed to understand and agreed to continue to comply. Mr. Ruoff stated that Wal-Mart Store #3436 does not employ any employees under the age of 18.

(b) (7)(E)

Result for (b) (6), (b) (7)(C)

No monetary findings resulted during the investigation. On 08/25/2015 (b) (6), (b) (7)(C)
was notified via telephone that (b) (7)(E)

Publications Provided:

HRG(to Co-Manager (b) (6), (b) (7)(C) on 08/20/2015), Fact Sheets: 44, 73, 77a

Recommendations:

Administrative close (b) (7)(E)

(b) (6), (b) (7)(C)

Wage and Hour Investigator

08/26/2015

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1765448 Originating District: St. Louis MO District Office
Local Filing Number: 2015-340-13658 Investigating District: St. Louis MO District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 07/09/2015
Assignment Date: 08/24/2015

Employer Information

Trade Name: Convergys Corporation

Legal Name: Convergys Corporation

Address: 41 Village Square

EIN: Dropped

County: St Louis

NAICS Code: 518210

Hazelwood, MO 63042

No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 12/14/2014 BNPI:
To: 10/28/2015 Reinvestigation: ☒
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☐
Compliance Status: Not Applicable Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

4.75hrs Sect 3s1A (b) (6) states that (b) (6), (b) (6) was not given accomendations (time) for purpose of expressing under Section 7r FLSA for newborn and was given attendance points when (b) (6), (b) (6) took longer than 15mins that was allowed for breaks in morning and afternoon. (b) (6) stated that HR made some accomendations and (b) (6) took position with another ER, (b) (7) (b) (7).

WHI Signature: _____ Date: 10/29/2015

Reviewed By: _____ Date: _____

October 28, 2015

Convergys Corporation Convergys Corporate Headquarters
41 Village Square Shopping Center 201 East Fourth Street
Hazelwood, MO 63042 Cincinnati, OH 45202
(314) 506-5400 (513) 727-7000

COVERAGE

Subject firm is a customer service oriented business that provides call center, customer service representatives, sales, market research services on behalf of commercial companies. Subject firm's President and Chief Financial Officer is Ms. Andrea J. Ayers; Vice President is Ms. Claudia L. Cline; Secretary, Ms. Tammy Rohrer and Treasurer, Mr. David R. Wiedwald. Subject firm has an additional location located at 1900 Meyer-Drury Dr., Arnold, MO 63010. Mr. Brian Campbell, Director, of the Hazelwood location.

Section 3(s)(1)(A), enterprise coverage is assumed as subject firm has locations throughout the United States and in other countries and over (b) (4) employees. Subject firm has over (b) employees at both the Hazelwood and Arnold, MO locations.

Case type: Limited FLSA Break Time for Nursing Mothers

MODO: Columbus District Office is MODO as subject firm is headquartered in Cincinnati, OH.

(b) (7)(E)

Prior History: St. Louis District Office includes the following case history:

- 1394233, 2005 (b) (7)(E) Hazelwood, MO location;
- 1399214, 2005, FMLA (termination), Arnold, MO location;
- 1458948, 2007, (b) (7)(E) Arnold, MO location;
- 1505844, 2008, FMLA (no violation), Hazelwood, MO;
- 1509354, 2008, FLSA (violations record keeping and overtime), Arnold, MO;
- 1511759, 2008, FMLA (no violation), Hazelwood, MO;
- 1603633, 2011, FMLA (termination), Hazelwood, MO;
- 1615190, 2011, FLSA (concluded, not valid compliant), Hazelwood, MO.

EXEMPTIONS

Not applicable, case concluded due to (b) (6), (b) (7)(C) (b) (7)(E) .

STATUS OF COMPLIANCE

This case was assigned based on (b) (7)(E) (b) (6), (b) (7)(C) . (b) (6), (b) (7)(C) states that (b) (6), (b) (7)(C) was not provided reasonable break time under FLSA nursing mothers for expressing milk for (b) (6), (b) (7)(C) child, under Section 7(r). (b) (6), (b) (7)(C) stated that if (b) (6), (b) (7)(C) went longer than the 15 minute paid break allotted in the morning and afternoon to express milk, (b) (6), (b) (7)(C) had to clock out and that additional time spent resulted in accumulation of points for tardiness. As the case progressed, (b) (6), (b) (7)(C) stated that two things happened (b) (7)(E) (b) (6), (b) (7)(C) stated (b) (6), (b) (7)(C) spoke with a human resource administrator and accommodations for expressing would be made by combining (b) (6), (b) (7)(C) 15 minute breaks together in addition to (b) (6), (b) (7)(C) 30 minute lunch break. Secondly, (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) has since found a new position with another company.

As a result of (b) (6), (b) (7)(C) new position, (b) (6), (b) (7)(C) has decided to (b) (7)(E) .

Section 6 (Minimum Wage)

Not applicable, case concluded due to complainant (b) (7)(E)

Section 7 (Overtime)

Not applicable, case concluded due to complainant (b) (7)(E) .

Section 11 (Record Keeping)

Not applicable, case concluded due to complainant (b) (7)(E)

Section 12 (Child Labor)

Not applicable, case concluded due to complainant (b) (7)(E)

Recommendations

It is recommended that this case be closed administratively in the St. Louis, MO District Office.

WHI (b) (6), (b) (7)(C)

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1766559 Originating District: Des Moines IA District Office
Local Filing Number: 2015-180-14372 Investigating District: Des Moines IA District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 07/22/2015
Assignment Date: 07/22/2015

Employer Information

Trade Name: Hard Rock Hotel and Casino Sioux City Legal Name: Sioux City Entertainment, Inc
Address: 111 3rd St EIN: 46-1842686
County: Woodbury
NAICS Code: 721120
No. Of Employees: (b) (4)
Sioux City, IA 51101

Investigation Information

Period Investigated From: 08/06/2013 BNPI:
To: 08/06/2015 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

16.5 hrs. FLSA coverage. Section 7 FSLNM coverage and violations. ER agreed to remedy and has done so. FC by phone w/ HR Dir. Kim Dellinger 08-06-15. ER assured future compliance and agreed to make additional accommodations for nursing mothers. (b) (7)(E)

WHI Signature: _____ Date: 08/17/2015

Reviewed By: _____ Date: _____

SIOUX CITY ENTERTAINMENT, INC.
DBA HARD ROCK CASINO
111 3RD STREET
SIOUX CITY IA 51101
(712) 226-7775
46-1842686

FLSNM NARRATIVE REPORT

COVERAGE

Subject is a casino with approximately (b) (4) employees. Home office is located at 3883 Howard Hughes Parkway, Suite 800 Las Vegas NE 89169. William Warner is listed as the president.

Subject firm is estimated to earn (b) (4) in sales volume. FLSA Section 203 (s)(1) enterprise coverage for investigation period 08-06-13 to 08-06-15.

FLSNM COVERAGE: Approximately (b) (4) employees are not exempt from Section 7 of the FLSA and are subject to FLSNM provisions. In addition to this, the firm has more than 50 employees and the needs of the nursing mothers did not appear to present an undue hardship for the employer.

HISTORY: None reported.

MODO: Case file has been associated with the Las Vegas NE DO. (D-1 to 3)

Investigation limited to FLSNM and approximately 4 affected employees.

EXEMPTIONS

None applied or misapplied within the scope of the limited investigation.

STATUS OF COMPLIANCE

(b) (7)(E) DATA: (b) (6), (b) (7)(C) (b) (7)(E) Hard Rock Casino Management failed to provide a private area for at least 4 nursing mothers to tend their personal needs. (b) (7)(E)

Specifically, the nursing mothers were required to use the public restroom with a curtain installed in violations of the FLSNM provisions.

SIOUX CITY ENTERTAINMENT, INC.
DBA HARD ROCK CASINO
111 3RD STREET
SIOUX CITY IA 51101
(712) 226-7775
46-1842686

FLSNM NARRATIVE REPORT PAGE #2

STATUS OF COMPLIANCE

(b) (7)(E) DATA: (b) (6), (b) (7)(C) did not claim that the nursing mothers were not afforded enough time.

The case was transferred from the Omaha AO to the Sioux City FO. The employer did not return messages to the investigator assigned the case in the Omaha AO. As a consequence, a physical visit was required.

Section 6 (MW): No violations within the limits of the investigation.

Section 7: 4 FLSNM violations. The employer failed to provide adequate facilities to 4 nursing mothers.

Section 11 (RK): No violations.

Section 12 (CL): No violations. The location does not hire employees less than 18 years of age.

DISPOSITION

FINAL CONFERENCE: HR Directors Kim Dellinger and Sara Anderson were visited at the establishment 08-03-15. The HR directors provided a tour of the “uniform room” which would afford the necessary privacy to nursing mothers. Ms. Dellinger also added that the employees could use her office for this purpose and further explained that a portion of the uniform room would be sealed off and a locked exit to the hall would be installed.

(b) (6), (b) (7)(C) was contacted by telephone 08-03-15 and denied that (b) (6), (b) (7)(C) or the others had been provided with notice that the HR office and uniform room would be made available.

SIOUX CITY ENTERTAINMENT, INC.
DBA HARD ROCK CASINO
111 3RD STREET
SIOUX CITY IA 51101
(712) 226-7775
46-1842686

FLSNM NARRATIVE REPORT PAGE #3

DISPOSITION

FINAL CONFERENCE: Kim Dellinger contacted the FO via email 08-06-15 and a final conference by telephone was held that day. The HR director forwarded an email which was sent to all supervisors advising them of the pending construction of a space in the uniform room and nursing mothers are to use either the uniform room or the HR Director's office as needed. (D-4,5) The employer assured future compliance and agreed to remedy.

(b) (6), (b) (7)(C) Call to (b) (6), (b) (7)(C) 08-06-15. (b) (6), (b) (7)(C) verified that one nursing mother, (b) (6), (b) (7)(C), sent (b) (6), (b) (7)(C) a text saying that they were allowed to use the uniform room. (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) was further advised to contact the Sioux City Field Office is (b) (6), (b) (7)(C) is not provided with suitable accommodations the following weekend.

To date, (b) (6), (b) (7)(C) has not contacted the Sioux City Field Office.

PUBLICATIONS: Left FS # 73 with HR Director Kim Dellinger.

(b) (6), (b) (7)(C), 08-13-15

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1768895 Originating District: St. Louis MO District Office
Local Filing Number: 2015-340-13707 Investigating District: St. Louis MO District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 08/17/2015
Assignment Date: 08/24/2015

Employer Information

Trade Name: Subway Legal Name: CNW Management LLC
Address: 2000 Forum Blvd. Suite 4 EIN: 26-3868282
Columbia, MO 65203 County: Boone
NAICS Code: 722211
No. Of Employees: (b) (7)(C)

Investigation Information

Period Investigated From: 08/02/2013 BNPI:
To: 08/02/2015 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Full Investigation Future Compliance Agreed: ☒
Compliance Status: Compliance (no violations found) Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

42 hrs. FLSNM 3(s)1(A) No violation after initial conf., records check, ee interview. Final conf. held with Elizabeth Leatherman, HR Manager, 01/19/2016. Recommend administrative closing. Provided Fact Sheet #73 & HRG.

WHI Signature: _____ Date: 01/22/2016

Reviewed By: _____ Date: _____

CNW Management LLC dba
Subway
809 West Newton Street
Versailles, MO 65084
573-378-5640
Fax. 573-474-8950
EIN # 26-3868282

FLSNM COVERAGE:

Subject firm is a full service restaurant and is covered under the 3(s)1(A) of the FLSA. Business operations began 01/1990. The firm currently employs (b) (4) employees. The firm's ADV is in excess of (b) (4) for 2014, 2013 & 2012. Some employees were individually covered during the entire investigation period as they regularly handled goods which have moved in interstate commerce daily sending and receiving faxes, mail and telephone calls outside the state of MO on a regular basis. There are no Independent Contractors.

There are 53 restaurants(Subway, 5 Guys Burgers & Fries, Moes Southwest Grill) all in Missouri. The franchise business office is located 2000 Forum Blvd., Suite 4, Columbia, MO 65203, 573-445-0015.

Jeff Offutt is the President. Elizabeth Leatherman, Human Resource Manager is the 3d employer. She acts directly in the interest of an employer in relation to an employee per Sec. 203 (d) of the FLSA by acting in the capacity of officer or agent that hire, fire employees, assign duties, set pay rates and work hours. The period of investigation is from 08/02/2013 to 08/02/2015.

MODO: St. Louis, MO is the MODO.

Investigation type: Full Investigation. (b) (7)(E)

History: No history.

EXEMPTIONS

13(a)(1) None challenged.

541 None challenged.

STATUS OF COMPLIANCE

This investigation was initiated (b) (7)(E) under FLSNM. (b) (6), (b) (7)(C) (b) (7)(E) failure to provide reasonable break time and failure to provide adequate space. (b) (7)(E)

(b) (6), (b) (7)(C) worked 2 weeks training with the Manager for an Asst. Mgr. position 5 days a week and admits (b) (6), (b) (7)(C) was able to express during this time. (b) (6), (b) (7)(C) stated (b) (6), (b) (7)(C) was scheduled nights and didn't have child care for nights and needed daytime hours so (b) (6), (b) (7)(C) quit.

Section 6: Minimum Wage

No MW violations disclosed. All employees are paid at least the current \$7.25 minimum wage rate.

Section 7: Overtime

No OT violations disclosed. The firm T1/2 after 40 hours in a week.

Section 11: Record keeping

No RK violations disclosed. The firm maintained an accurate record of hours worked and isolated overtime hours separately in the records.

Section 12 - Child Labor

No CL violations disclosed. The employer did not hire minors.

DISPOSITION

A final conference was held with Elizabeth Leatherman, Human Resource Manager, 01/19/2106. Inv. (b) (6), (b) (7)(C) represented Wage & Hour. All applicable provisions of the FLSNM were discussed. Specifically explained were providing reasonable break time and providing adequate space.

Mrs. Leatherman explained that the firm knew about (b) (6), (b) (7)(C) concerns for needing reasonable break time and adequate space because the Store manager and Regional manager brought it to their attention. Also Mrs. Leatherman stated that the facility did not have an office or isolated area but allowed (b) (6), (b) (7)(C) use of a storage room to express and gave break time. Mrs. Leatherman admitted according to the Health Dept. (b) (6), (b) (7)(C) would not be able to store breast milk in the cooler as this was considered unsanitary.

Mrs. Leatherman insisted they were looking to modify accommodations because there was another employee expressing milk and another employee pregnant at the time and they needed to know how to resolve cooler issue.

Inv. (b) (6), (b) (7)(C) explained the Act does not define "reasonable break time," only that time has to be allotted. Also employers are not required to provide compensated break time, but the employee must be completely relieved from duty, or the break time must be compensated as work time.

Inv. (b) (6), (b) (7)(C) also informed the employer that the location designated or space made available must be functional as a space for expressing milk. Inv. (b) (6), (b) (7)(C) notified the employer additional issues to consider are securing space from intrusion, storage of milk and pumps.

Mrs. Leatherman stated the President, Mr. Offutt inquired with corporate about storage of milk and pumps using the back room space where the cooler is since it's in a dry space and houses the soda canisters. Corporate informed them of the possibility of undue hardship to the firm causing the employer significant difficulty or expense when considered in relation to the size and structure of the business since it's the firm's policy to not have offices to eliminate unnecessary space.

Inv. (b) (6), (b) (7)(C) explained that the employer bears the burden of proof that compliance with nursing mothers break time provision would be an undue hardship and show that compliance would cause the employer significant difficulty or expense when considered in relation to the size, financial resources or structure of the employer's business.

Mrs. Leatherman insisted they wanted to know how to comply because they were willing to make the approved accommodations. Mrs. Leatherman stated a cooler for the milk and pumps was the only way to rectify the situation.

(b) (6), (b) (7)(C) was notified 01/22/2016.

Subway Case ID: 1768895

Publications provided and discussed: Fact Sheet #73 & HRG.

Recommendations: Recommend administrative closing.

(b) (6), (b) (7)(C)

Wage & Hour Investigator

01/22/2016

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1775819 Originating District: Kansas City KS District Office
Local Filing Number: 2016-221-14898 Investigating District: Kansas City KS District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 11/04/2015
Assignment Date: 11/04/2015

Employer Information

Trade Name: Walmart # 1802 Legal Name: Wal-Mart Inc.
Address: 1501 S.W. Wanamaker EIN: 71-0794409
County: Shawnee
NAICS Code: 452910
Topeka, KS66604 No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 12/12/2013 BNPI:
To: 12/09/2015 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

FMLA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FMLA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

19hrs. (b) (7)(E) 3s1a. (b) (7)(E) not given adequate space to express milk. Violation (b) (7)(E) ER ATC - room designated for NM purposes and adequate breaks will be given. (b) (7)(E) ntfd on 12/18/15 and advise to call WHD if any other problems. Pubs provided:HRG, FS 43, FS 73, FS 28D, CL 101, NM EE rights cards. Recommend admin closing file.

WHI Signature: _____ Date: 01/19/2016

Reviewed By: _____ Date: _____

Wal-mart, Inc.
d/b/a Wal-mart # 1802
1501 SW Wanamaker Rd
Topeka, KS 66604
Telephone: 785-271-6444
FEIN: 71-0794409

FLSANM NARRATIVE

This investigation was initiated (b) (7)(E) .

COVERAGE:

Subject firm is a multinational retail corporation. The above listed location is one of thousands worldwide. The address for home office is 702 SW 8th St, Bentonville, AR 72716. The contact person for the investigation was the store assistant manager, Brian Kuermeier. Mr. Kuermaier made decisions regarding future compliance and is considered the 3(d) employer.

According to the firm's website (<http://corporate.walmart.com/news/walmart-facts/corporate-financial-fact-sheet>) the ADV was in excess of \$442 billion for fiscal year 2015 and the company employs over 2.2 million employees.

Section 3(s)(1)(A) coverage is applicable for the entire investigation period. The enterprise met the ADV requirement and has several thousand employees that handle goods that move interstate.

The period of investigation is from 12/12/2013 through 12/09/2015 and is limited to the complainant.

Pay periods are bi-weekly. The workweek ends on Friday. No payroll or time records were requested as (b) (7)(E) was limited to the Nursing Mothers' provisions of the Act.

Contingent workers: None.

Federal contracts within the last three years: None DUNS: N/A Cage: N/A

(b) (7)(E)

See Exhibits D-1 through D-1-d.

16(b): Brian Kuermaier indicated he was not aware of any pending 16(b) actions.

EXEMPTIONS:

None considered. The investigation was limited to (b) (6), (b) (7)(C) is an hourly paid employee, non-exempt pharmacy associate. (b) (6), (b) (7)(C)

STATUS OF COMPLIANCE:

History: Extensive history exists for this ER.

(b) (6), (b) (7)(C) Information: (b) (7)(E) given (Exhibit D-2). (b) (6), (b) (7)(C), (b) (7)(E) (b) (6), (b) (7)(C) is forced to pump in the public bathroom or in the pharmacy restroom and that (b) (6), (b) (7)(C) is only allowed to pump during designated breaks. (b) (7)(E) and Exhibit B-1.

Section 207(r)(1)(A)- Time of Break: No violations found. (b) (6), (b) (7)(C) (b) (7)(E) (b) (6), (b) (7)(C) was only allowed to pump during designated rest and lunch breaks. The store manager indicated the store was under new management and was unaware of how NM breaks were previously handled. The corporate policy indicated nursing mothers may take breaks as needed. No other employees were interviewed. Based on the limited information available, a violation was not asserted. Breaks were discussed with the ER during the final conference.

Section 207(r)(1)(B) – Place of Break: Violations found. A violation occurred when (b) (6), (b) (7)(C) was not provided a functional place other than a bathroom for purposes of expressing milk.

Section 207(r)(2) – Compensation of Break Time: No violations found. (b) (6), (b) (7)(C) was paid (b) (6), (b) (7)(C) for normal rest breaks.

Section 207(r)(3) – Undue Hardship: None considered as the firm employs more than 50 employees and the firm did not claim any hardships.

It should be noted (b) (6), (b) (7)(C) initial (b) (7)(E) stated (b) (6), (b) (7)(C) as a result of pumping in the bathroom. WH (b) (6), (b) (7)(C) further discussed this with (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) indicated (b) (6), (b) (7)(C) is not 100% sure that was reason for the (b) (6), (b) (7)(C) HCP indicated it could have been due to several reasons. No further action was taken regarding this claim. (b) (6), (b) (7)(C) was also not eligible for FMLA. (b) (6), (b) (7)(C) did not work the required 1,250 hours and did not have time 12 months of service at the time leave would have started.

DISPOSITION:

A final conference was held at the establishment with the assistant store manager Brian Kuermaier on 12/09/15. WHI (b) (6), (b) (7)(C) briefly discussed FMLA coverage and eligibility as well as the FLSA including minimum wage, overtime and recordkeeping. Also discussed were the FLSA child labor provisions including Reg 3 hours/time standards, Reg 3 occupations, and HO's. WHI (b) (6), (b) (7)(C) specifically reminded Mr. Kuermaier of HO orders # 10, 11, and 12. Mr. Kuermaier stated the firm does not employ workers under 18 years of age in the deli or bakery. He also stated employees under 18 years of age are not allowed to operate, load, unload, or in any way handle the trash compactors/balers.

A comprehensive explanation of the break time for Nursing Mothers provision was explained. Regarding (b) (6), (b) (7)(C) Mr. Kuermaier indicated the store is under new management as of approximately 11/01/15 and was not aware of how NM break time requests were previously handled.

As a resolution to this issue, an unused office near the front NW corner of the store (in the stock area) has been designated exclusively for nursing mothers. The room has an electrical outlet and has been equipped with a table, chairs, radio, rug, lamp, and a clock. The door has a lock with two working keys. One key is held by the store manager and the other key will be held in a lockbox and can be checked out as needed.

Mr. Kuermaier stated nursing mothers can take breaks as needed. Any additional time over the two (2) 15 minute breaks allotted by the company will be unpaid.

Additionally, Mr. Kuermaier has agreed to the following:

- A sign will be created indicating the room is exclusively for nursing mothers.
- A storage unit and refrigerator will be placed in the room.
- FS 73 will be posted on the associate bulletin board.
- During the next manager meeting (held weekly), he will discuss the NM provisions of the Act to ensure all managers are aware of EE rights and how to handle the requests
- The NM EE rights card will be provided to EEs when management is made aware of their pregnancy

Mr. Kuermaier has agreed to continued compliance with the Act and will contact WHI (b) (6), (b) (7)(C) should any further questions or issues arise.

Publications: HRG, FS 43, FS 73, FS 28D, CL 101, NM EE rights cards

(b) (6), (b) (7)(C) Notification (b) (6), (b) (7)(C) was contacted on 12/18/2015 to verify the room was made available and the issues have been resolved.

RECOMMENDATIONS:

-
- I. Recommend administratively closing this file with no further action.
 - II. Correspondence should be sent to:
Wal-mart, Inc.
1501 SW Wanamaker Rd
Topeka, KS 66604
Attention: Brian Kuermaier, assistant store manager

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1775998 Originating District: Minneapolis MN District Office
Local Filing Number: 2016-250-09036 Investigating District: Minneapolis MN District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 11/06/2015
Assignment Date: 11/06/2015

Employer Information

Trade Name: Natures Path Food Legal Name: Natures Path Food Inc
Address: W227 N6088 Sussex Rd EIN: 91-1825645
County: Waukesha
NAICS Code: 3119
Sussex, WI53089 No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 11/19/2013 BNPI:
To: 11/19/2015 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☐
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

20.75hrs COV:3S1A ADV and Intst comm req's met. Infant less than 1 yr. ER has approx (b) (4) EEs, no undue hardship. SOC: (b) (6), (b) (7)(C), (b) (7)(E) insufficient break time for expressing breast milk, and space provided not accessible. 11/13 (b) (7)(E). Space sufficient, break time policy changed by ER due to WHD intervention. No monetary viols. FC: 12/10 with HR Mngr Soledad Wendt/Tim Harding. ATC.

WHI Signature: _____ Date: 12/10/2015

Reviewed By: _____ Date: _____

FLSA Narrative Report

Case ID: 1775998

EIN:91-1825645

Trade Names: Nature's Path Foods

Legal Names: Nature's Path Foods

Main Office: 9100 Van Horne Way, Richmond BC V6X 1W3, Canada

Branch Locations: W227 N6088 Sussex rd, Sussex, WI 53089 USA

2220 Natures Path Way, Blaine, WA 98230 USA

An initial conference was held on 11/19/15 at one of the US warehouses and offices , W227 N6088 Sussex rd, Sussex WI 53089. The Plant Manager- Tim Hardison, the HR Manager- Soledad Wendt, and ADD Castillo were present with WHI (b) (6), (b) (7)(C) WHI (b) (6), (b) (7)(C) explained that WHD was (b) (7)(E) the FLSA's provisions for nursing mothers in the workplace. WHI (b) (6), (b) (7)(C) added that the minimum wage, overtime, recordkeeping and child labor requirements of the FLSA are typically part of a compliance review. WHI (b) (6), (b) (7)(C) also noted the process and potential outcomes of a FLSA investigation (including the possibility of minimum wage and overtime back wages found due, an assessment of an equal amount of liquidated damages, an assessment of civil money penalties, etc.) and explained that, unless issues regarding these matters are disclosed, this investigation will be limited to the enforcement of 7(r). WHI (b) (6), (b) (7)(C) noted that WHD should be seen as a resource in the future for any issues related to the FLSA, and FMLA (which was also described briefly).

COVERAGE

Period of Investigation: From 11/19/2013 to 11/19/15

3(s)(1)(a) The enterprise engages in interstate commerce in that about 80% of carrier services is conducted by CH Robinson, and the company's distribution is handled largely by United Distribution and Orbit. The company also does some direct sales to wholesalers such as Costco and Sam's club. The company headquarters is in Richmond, British Colombia. Therefore, all employees are covered on an enterprise basis for the entire period of the investigation.

ADV

2015: (b) (4)
2014: (b) (4)
2013: (b) (4)

Number of Employees: (b) (4) (Enterprise)
Number of Employees: (b) (4) (Establishment)

Both the enterprise and the establishment have more than 50 employees, and therefore cannot claim a defense of undue hardship. All hourly non-exempt employees are therefore covered under the FLSANM provisions.

3(d) employers: The company is privately held by the Stephans family. While the ownership structure and share distribution was not made available by the company, it was confirmed that the President/Founder Arran Stephans and Ratana Stephans, the Co-Chief Executive Officer and Operating Officer, were the responsible persons. They formulate company policy, direct branch activity, and are active participants in daily operations of the company.

(b) (7)(E)

EXEMPTIONS

An ("white collar") administrative exemption was correctly applied in the case of one nursing mother interviewed (Exhibit B- 2), who is a former employee. (b) (6), (b) (7)(C) was employed as both a Human Resources Coordinator, and then later a Payroll and Benefits manager. Per 541.203(e) this exemption is applicable given (b) (6), (b) (7)(C) (former) duties in the position. While (b) (6), (b) (7)(C) was exempt from the requirements of 7(r), (b) (6), (b) (7)(C) interview provided more insight to the procedures typically followed both company-wide, and at this plant.

STATUS OF COMPLIANCE

History: None.

Reason for investigation: This limited investigation began with (b) (7)(E) (b) (6), (b) (7)(C) (b) (7)(E) insufficient break time was provided to (b) (6), (b) (7)(C) as an eligible

nursing mother, and that the space provided to (b) (6), (b) (7)(C) was both unsanitary and inaccessible. The violations (b) (7)(E) (b) (6), (b) (7)(C) (b) (7)(E) . The conditions of the room provided appeared to improve between the times (b) (6), (b) (7)(C) returned to work and the time WHI (b) (6), (b) (7)(C) was able to inspect the room. The accessibility issue was addressed for (b) (6), (b) (7)(C) during the period of investigation as well. (b) (7)(E) regarding break time (b) (7)(E) , as during a 12-hour shift, only two 15 minute breaks and one 30 minute break were allowed without (b) (6), (b) (7)(C) being subject to a disciplinary write-up. (b) (6), (b) (7)(C) (b) (7)(E) as the employer agreed to comply with the regulations. (b) (6), (b) (7)(C) was informed of all changes the employer agreed to make to physical accommodations, time keeping accommodations, and the handbook outlining expectations for employees.

Findings: **Section 6:** As this case was limited to reviewing the compliance of 7(r) and the surrounding regulations, no violation was found.

Section 7: Violations of the act's provision found in 7(r)1A were disclosed. Employees- regardless of the duration of their shift (ranging from 8 to over 12 hours), were only allowed to take two 15 minute breaks and one 30 minute break. While these were paid breaks, exceeding these break limits or taking additional breaks would warrant a disciplinary write-up. Subjecting a nursing mother employed at this plant to this policy inherently denies any other break for (b) (6), (b) (7)(C) to express breast milk when (b) (6), (b) (7)(C) has the need to.

(b) (7)(E) insufficient spaces previously provided by this plant were addressed at the initial conference, where the tour of the space showed that the current space provided to pump in was clean and accessible to the mother who used it. Additional accommodations were made for a current and former employee who wished to use their office spaces to pump (exhibits B-2, B-5).

Section 11: As this case was limited to reviewing the compliance of 7(r) and the surrounding regulations, no violation was found.

Section 12: As this case was limited to reviewing the compliance of 7(r) and the surrounding regulations, no violation was found.

DISPOSITION

A final conference was held December 10, 2015 at Location, Tim Hardison- Plant Manager, Soledad Wendt- HR Manager, and WHI (b) (6), (b) (7)(C) WHI (b) (6), (b) (7)(C) started by explaining that this case was a limited compliance review; there was no indication of violations in any other section of the act and therefore the investigation remained limited. WHI (b) (6), (b) (7)(C) explained that the concepts and guidance discussed in this conference should be applied to the other US location of Natures Path, if those practices are not instituted already. WHI (b) (6), (b) (7)(C) covered the general provisions of the FLSA and FMLA.

All (b) (7)(E) were addressed at this final meeting:

First, the space was determined functional. It was evident that the room provided has improved significantly (b) (7)(E) the tour of the establishment revealed a door hanger indicating the room is in use, a wall-mounted hand sanitizer dispenser, cleaning supplies, electricity outlets, a desk and chair (exhibit D-3). The new policy instituted by the company as a result of the WHD investigation will also furnish a fridge for breast milk, which will be monitored to ensure correct use, labeling of each bottle, and the date on which the breast milk was pumped (exhibit D-2). Some employees stated the conditions of the room before WHD intervention did not meet accessibility or cleanliness standards (exhibits B-1, B-5, B-7). WHI (b) (6), (b) (7)(C) and Natures Path agreed that room's conditions are currently in compliance with WHD's requirements; there is no violation as long as the dedicated room continues to satisfy the regulation's standards.

Second, the accessibility of the room was remedied. Before the WHD intervention, nursing mothers employed at Natures Path had an issue gaining access to the designated “personal” room, as to be able to express breast milk. This issue, according to HR Manager Soledad Wendt, arose from misinformation with the custodial staff. The issue has been addressed by granting nursing mothers key card access to the wing the room is located in, and informing all managers, custodial staff, and others with access to the referenced wing that this “personal” room should not be locked, in order to grant nursing mothers access to the room itself. The HR department's process is aligned with the new policy (exhibit D-2) in that; nursing mothers wishing to gain access should see the Human Resources Department.

Third, to accommodate multiple mothers nursing simultaneously, Natures Path has noted that they are in operation 24-hours a day and 7-days a week. With this flexibility, the Plant Manager Tim Hardison stated that mothers nursing in the same period of time can be accommodated by switching shifts, so there is no

overlap on the shifts they would work. If two mothers wish to express breast milk in the same shift, scheduling would occur through the Human Resources Department.

Finally, break time issues were addressed. (b) (6), (b) (7)(C) (b) (7) having insufficient break time to fully express breast milk, and the frequency of breaks insufficient. The new policy instituted in the handbook addresses break time, noting that nursing mothers who have arranged access to the designated room will be entitled to paid break time to express breast milk (exhibit D-2). With regards to (b) (6), (b) (7)(C) was never subject to the disciplinary actions (exhibit B-4, D-4) the company has in place to address employees who abuse break time privileges. This was stated by (b) (6), (b) (7)(C) (B-7) and (b) (6), (b) (7)(C) supervisor (B-6). WHI (b) (6), (b) (7)(C) advised the company that the "Break/Rest Periods" of the handbook (exhibit D-4e) should be amended to reflect the new policy on nursing mothers.

(b) (6), (b) (7)(C) mentioned an additional employee who had been nursing while working at Nature's Path- (b) (6), (b) (7)(C) (B-7). The HR manager was not aware of this person; WHI (b) (6), (b) (7)(C) made several attempts to obtain (b) (6), (b) (7)(C) phone number or contact information through (b) (6), (b) (7)(C). This former employee could not be contacted, no employment relationship could be substantiated, and therefore it was presumed that this employee's period of employment fell outside of the statute of limitations.

Some additional information was provided with regards to FMLA:

WHI (b) (6), (b) (7)(C) advised Natures Path that the company policies outlined in the employee handbook (D-4f through D-4j) could be supplemented only in that there is no mention of duration of employment in the employee eligibility section. For clarification purposes, it should be stated that an employee must have had worked 12 months (and 1,250 hours within the last twelve months) to be eligible for federal FMLA.

The employer was informed that the violations being cited are non-monetary. It was made clear that monetary violations of 7(r) include situations in which the nursing mother might have been terminated, or situations in which deductions were taken from the employees pay due to time spent expressing breast milk. After agreeing to comply with FLSA in the future, the employer reiterated changes the company has and will take to come into compliance:

- Break time to accommodate nursing mothers will be granted to those who have asked for access to it, this break time will be paid;
- Accessibility to a room shielded from other employees and the public will be granted to those who

- gain access through the Human Resources Department, for the purposes of expressing breast milk;
- A meeting will be scheduled with expecting mothers, ideally before the birth of (b) (6), (b) (7)(C) child, to explain how to gain key card accessibility to the wing of the plant housing the “personal” room. The employee will be expected to report back to HR upon (b) (6), (b) (7)(C) return to work, as to actually gain access;
 - The room is and will be cleaned regularly by custodial staff,
 - The room is and will be equipped with a fridge to store breast milk in,
 - The new policy (exhibit D-2) will be added to the handbook, distributed to all employees, and signed by all employees before the end of the next pay period.
 - The employer stated that the headquarters is aware of the new policy, and similar policies will be instituted in all facilities- in the United States and in Canada.

(b) (6), (b) (7)(C) was notified of case results on 12/10/15.

Publications provided: FLSA, Fact Sheet #73, Fact Sheet #28D, Fact Sheet #28E, Fact Sheet #77a, Break Time for Nursing Mothers PPT, Employee Guide to FMLA, FMLA

Recommendations: WHI recommends administrative closing.

(b) (6), (b) (7)(C)

Investigator

12/10/15

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1779901 Originating District: Des Moines IA District Office
Local Filing Number: 2016-180-14699 Investigating District: Des Moines IA District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 12/21/2015
Assignment Date: 12/21/2015

Employer Information

Trade Name: Buffalo Wild Wings Legal Name: Buffalo Wild Wings
Address: 8201 Andernatt Drive EIN: (b) (7)(E)
County: Lancaster
NAICS Code: 722110
Lincoln, NE 68526 No. Of Employees: 35

Investigation Information

Period Investigated From: 11/01/2015 BNPI:
To: 11/14/2015 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: (b) (7)(E) Future Compliance Agreed: ☐
Compliance Status: Compliance (no violations found) Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☒
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: 01/21/2016
Submit For Opinion: ☐ Trailer forms attached: ☐

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

WHISARD Compliance Action Report

Conclusions & Recommendations:

CN: EE stated ER did not provide reasonable space for express nursing: 12/21/15 ER mgr Shawn Vrchosticky contacted and informed even if ER has less than 50 EEs ER may still be responsible for compliance with nursing mother reg: Mr. Vrchosticky ATC: no viol found as EE quit job (b) (7)(E) ER sent copy of FS Nursing mothers and WH contact information: rec admin cls.

WHI Signature: _____ Date: 12/22/2015

Reviewed By: _____ Date: _____

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1780522 Originating District: Detroit MI District Office
Local Filing Number: 2016-185-09932 Investigating District: Detroit MI District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 01/04/2016
Assignment Date: 01/04/2016

Employer Information

Trade Name: Andiamo Italia Legal Name: L.V. Management, Inc.
Address: 7096 E. 14 Mile Road EIN: 38-2954394
County: Macomb
NAICS Code: 72211
Warren, MI 48092 No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 01/23/2014 BNPI: 8
To: 01/22/2016 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	
Total Violations Under FLSNM:	2						\$0.00

FMLA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FMLA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

Limited Investigation. 3(s)(1)(A) coverage. Sec. 7 violations: ER failed to provide [REDACTED] with an adequate space and breaks to express milk. Er agreed to comply and corrected both violations. Recommend case to be administratively closed. Pub: HRG. FS #s: 14, 15A, 15 B, 16, 17A,17B, 17C, 21,22,23, 28d, 44, & 77a.

WHI Signature: _____ Date: 03/25/2016

Reviewed By: _____ Date: _____

**U. S. Department of Labor
Wage & Hour Division
FLSA Narrative Report**

Case File: 1780522

Local ID: 2016-185-09932

Legal Name: L.V. Management, Inc.

Doing business as: Andiamo Italia

Establishment address: 7096 E. 14 Mile Rd.

Warren, MI 48092

Telephone Number: 586-268-3200

Federal I.D. Number: 38-2954394

Employer Contact: Attorney Sam Morgan

Address: 30500 Northwestern Highways, Suite 425

Farmington Hills, Michigan

Telephone Number: (248) 865-0001

Fax: (248) 865-0002

Email: smorgan@gmgmklaw.com

CASE ASSIGNMENT INFORMATION:

(b) (7)(E) Data: This investigation (b) (7)(E) under the Break Time for Nursing Mothers under Section 29 U.S.C. 207 (r) of the FLSA. (b) (7)(E) (b) (6), (b) (7)(C) (b) (7)(E) the employer did not provide (b) (6), (b) (7)(C) with an adequate space to express milk. (b) (6), (b) (7)(C) (b) (7)(E) was told to pump in (b) (6), (b) (7)(C) car and in the bathroom. (b) (6), (b) (7)(C) provided the employer with the rules from USDOL website on break time for nursing mothers but the employer was unwilling to provide an adequate space. (b) (6), (b) (7)(C) (b) (7)(E) .

During the investigation, (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) hours were cut. (b) (6), (b) (7)(C) (b) (7)(E) on both issues were addressed with the employer. The employer provided the following response and remedies.

Employer response and remedies:

Assistant Manager (b) (6), (b) (7)(C) had a meeting with (b) (6), (b) (7)(C) on February 27, 2016 (Exhibit D8). Both parties agreed to the following terms:

(b) (6), (b) (7)(C) will be provided two rooms to express milk: the dressing room and the back-up nursing room. The dressing room to be used on the days when there is no show in the banquet center. The dressing room has a sofa and some end tables, has a lock to ensure privacy, and an attached bathroom. The back-up nursing room to be used when there is a show and the dressing room is occupied by the entertainers. The back-up room is a private office in the executive suite above the restaurant. WHI (b) (6), (b) (7)(C) checked the dressing room during the Initial Conference (Exhibit D1 &2).

(b) (6), (b) (7)(C) would be given reasonable breaks for expressing breast milk. (b) (6), (b) (7)(C) should give the banquet management notice of (b) (6), (b) (7)(C) need for break time to express breast milk as early as possible. (b) (6), (b) (7)(C) was notified by (b) (6), (b) (7)(C) that the scheduling of (b) (6), (b) (7)(C) break time should be mutually convenient time for both of them. The timing will be communicated with the other wait staff to ensure that (b) (6), (b) (7)(C) tables are covered during (b) (6), (b) (7)(C) break time (Exhibit D2).

In regard to (b) (6), (b) (7)(C) (b) (7)(E) (b) (6), (b) (7)(C) hours were cut, the employer provided the following response:

The employer stated that January and February were a slow period for the banquet. On four of the weekends there were no shows scheduled and (b) (6), (b) (7)(C) had asked for one weekend off due to personal commitment. However (b) (6), (b) (7)(C) was scheduled for showers that were held during couple weekends.

The employer stated that (b) (6), (b) (7)(C) was not the only part timer not scheduled to work the small shows. The employer added that (b) (6), (b) (7)(C) would have the same schedule regardless of (b) (6), (b) (7)(C) nursing mother status and whether or not (b) (6), (b) (7)(C) (b) (7)(E) (b) (6), (b) (7)(C) was hired to work in the banquet center on weekends as a part time employee (Exhibit D2 &3).

The employer assured WHI (b) (6), (b) (7) that (b) (6), (b) (7)(C) will be given as many as possible 2- shift weekends due to the fact that business will pick up during the spring and more parties will be scheduled during that time. The employer has agreed to comply with the laws enforced by the Fair Labor Standard Act and in specific with 29 U.S.C. 207 (r) of the FLSA.

WHI (b) (6), (b) (7) contact (b) (6), (b) (7)(C) on March 11, 2016, (b) (6), (b) (7)(C) indicated that (b) (6), (b) (7) was provided a room and given breaks to express milk. (b) (6), (b) (7) added that (b) (6), (b) (7) is going through a training period with the employer to work on a mutually agreed scheduled break time that would be convenient for both parties. (b) (6), (b) (7) added that (b) (6), (b) (7) was happy with the outcome of the case.

A Limited investigation was conducted. The investigation was limited to provision enforced under the Break Time for Nursing Mothers under Section 29 U.S.C. 207 (r) of the FLSA. However WHI (b) (6), (b) (7) reviewed the profile work week and FMLA policy. The employer was given guidance on both the FLSA and FMLA laws (Exhibit D4, 5, 6, & 36).

Section 3(d) Employer: Mr. Peter A. Gray and Mr. Joseph P. Vivari are the section 3(d) employers. Both manage the daily operations of the business, have the ultimate control, and implement company policies for the restaurant.

Investigation History: This is the first investigation for this employer under the Break Time for Nursing Mothers under the FLSA. A case was assigned under the FLSA in November 2009. However the case was dropped; (b) (6), (b) (7) decided to exercise (b) (6), (b) (7) 16 b rights (Exhibit D54).

Investigation Period: The period of investigation was from January 23, 2014 to January 22, 2016.

Number of establishments: The employer owns 9 locations within the Detroit area:

Andiamo Detroit Riverfront: 400 Renaissance Center A-403, Detroit, MI 48243

Andiamo Trattoria Grosse Pointe Woods: 20930 Mack Ave, Grosse Pointe Woods, MI 48236.

Andiamo Dearborn: 21400 Michigan Ave, Dearborn, MI 48123.

Andiamo Royal Oak: 129 S Main St, Royal Oak, MI 48067.

*Andiamo Warren: 7096 E 14 Mile Rd, Warren, MI 48092.

Andiamo of Sterling, Inc.: 14425 Lake Side Circle, Sterling Heights, MI 48313.

Andiamo West, Inc.: 6676 Telegraph Rd., Bloomfield Hills, MI 48301.

Andiamo of Clarkston, LLC: 7228 N. Main Street, Clarkston, MI 48346.

Andiamo of Livonia, LLC. : 38703 Seven Mile Road, Livonia, MI 48152.

*Establishment physically investigated.

COVERAGE: L.V. Management, Inc dba Andiamo Italia is a Michigan corporation that operates as an Italian restaurant and banquet center. The firm was incorporated in October 1990 for profit. The office employs an average of (b) (4) employees. Employees are hired as managers, wait staff, bussers, clerical employees, dishwashers, and cooks. The firm did not have any employees that were misclassified as Independent Contractor.

The employer is covered under Section 3(s)(1)(A) of the FLSA. The gross ADV of the enterprise:

(b) (4) for 2013 (Exhibit C2)
(b) (4) for 2014 (Exhibit C3)
(b) (4) for 2015 (Exhibit C4).

FLSA coverage was asserted for all workers, in all work weeks of the investigation period, as they continually handle merchandise that has been shipped from out of state.

All nine locations are considered one enterprise because of the common control and unified operations for a common business purpose:

- All corporations have a common business purpose. All corporations operate as Italian restaurants.
- Common ownership; Mr. Joseph P. Vicari has at least (b) (4) percent ownership in all locations.

- Corporations share employees; employees work across locations within the same pay period when needed but on rare occasions.
- All restaurants hold themselves out to be as one company. Andaimo's website lists all the locations as if they are under one enterprise.
- All restaurants share very similar employees' handbook.

MODO: Detroit District office is the MODO. (b) (7)(E)

EXEMPTIONS:

29 U.S.C. 207 (r) (3) Undue Hardship Exemption does not apply for this employer. L.V. Management, Inc. dba Andiamo Italia currently has an average of (b) (4) employees that work at establishment investigated.

29 CFR 541.100 exemptions: was inapplicable to (b) (6), (b) (7)(C) was non-exempt hourly employee.

541 Exemptions: Based on list provided by the employer for employees, the employer was asked to review the exemption status for clerical employees (Exhibit D4, 5, &6). After the review the employer stated that all exemptions are properly applied to clerical workers. Therefore the exemptions were not challenged or questioned.

STATUS OF COMPLIANCE

Section 6, Minimum Wage: The investigation was limited to provision enforced under the Break Time for Nursing Mothers (Section 29 U.S.C. 207 (r) of the FLSA).

Section 7, Overtime: The investigation was limited to provision enforced under the Break Time for

Nursing Mothers (Section 29 U.S.C. 207 (r) of the FLSA).

Section 7 (r): (b) (6), (b) (7)(C) was not exempt from section 7 of the FLSA therefore (b) (6), (b) (7)(C) was entitled to all the provisions that is enforced under FLSA 207 (r) (1) of the FLSA.

Section 11, Record Keeping: The investigation was limited to provision enforced under the Break Time for Nursing Mothers (Section 29 U.S.C. 207 (r) of the FLSA).

Section 12, Child Labor: The investigation was limited to provision enforced under the Break Time for Nursing Mothers (Section 29 U.S.C. 207 (r) of the FLSA).

(b) (7)(E)

Disposition

On March 21, 2016, WHI (b) (6), (b) (7) held the final conference via phone with the employer representative Attorney Sam Morgan. WHI (b) (6), (b) (7) explained Fact Sheet #73, Break Time for Nursing Mothers under the FLSA and Reasonable Break time for Nursing Mothers Notice during the IC and briefly went over it during the final conference.

Mr. Sam Morgan was informed of the violations that were disclosed under Section 29 U.S.C. 207 (r) of the FLSA for the Break Time for Nursing Mothers. Mr. Morgan gave ignorance of the law by the employer as the reason for the violations. However Mr. Morgan assured WHI (b) (6), (b) (7) that the employer is currently aware and complying with the laws enforced by the Fair Labor Standard Act and in specific with Section 7 (r).

Recommendation: It is recommended that the case be administratively closed.

Publications provided:

Handy Reference Guide was provided with the IC letter

Fact Sheet 14 - Coverage under the FLSA

Fact Sheet #15 - Tipped Employees under the Fair Labor Standards Act (FLSA)

Fact Sheet #15A - Ownership of Tips under the Fair Labor Standards Act (FLSA)
Fact Sheet 16 – Deductions from Wages for Uniform and other Facilities under FLSA
Fact Sheet #17A - Exemption for Executive, Administrative, Professional, Computer and Outside Sales
Fact Sheet 17B – Exemption for Executive Employees under FLSA
Fact Sheet 17C– Exemption for Administrative Employees under FLSA
Fact Sheet 21 - Recordkeeping Requirements under the FLSA
Fact Sheet 22 - Hours Worked under the FLSA
Fact Sheet 23 - Overtime Pay Requirements of the FLSA
Fact Sheet 28 – The Family and Medical Leave Act
Fact Sheet 44- Visit to Employers
Fact Sheet 77a- Prohibiting Retaliation Under the Fair Labor Standards Act (FLSA)

Please mail any correspondence to this address:

Attorney Sam Morgan
30500 Northwestern Highways, Suite 425

(b) (6), (b) (7)(C)

3/25/2016

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1786713 Originating District: St. Louis MO District Office
Local Filing Number: 2016-340-14009 Investigating District: St. Louis MO District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 03/15/2016
Assignment Date: 03/23/2016

Employer Information

Trade Name: 4M Building Solutions

Legal Name: 4M Building Solutions, Inc.

Address: 2827 Clark Ave

EIN: 43-1147598

County: St Louis City

NAICS Code: 561720

Saint Louis, MO 63103

No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 04/08/2014
To: 04/07/2016
Investigation Type: (b) (7)(E)
Investigation Tool: Limited Investigation
Compliance Status: Agree to Comply

BNPI:
Reinvestigation: ☐
Recurring Violation: ☐
Future Compliance Agreed: ☒
Involved in AG: ☐

Recommended Action:

BWFS:	<input type="checkbox"/>	RO/NO Review:	<input type="checkbox"/>
CMP:	<input type="checkbox"/>	Follow Up Investigation:	<input type="checkbox"/>
Litigation:	<input type="checkbox"/>	Other Action:	<input type="checkbox"/>
Civil Action:	<input type="checkbox"/>	Denial of Future Certificate:	<input type="checkbox"/>
Criminal Action:	<input type="checkbox"/>	BW Payment Deadline:	
Submit For Opinion:	<input type="checkbox"/>	Trailer forms attached:	<input type="checkbox"/>

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

CT-12

Lim inv of 7r. 3s1a cov. (b) (7)(E) - (b) (6), (b) (7)(C), (b) (7)(E) inadequate space (b) (7)(E) and inadequate time (b) (7)(E) FCon 4/8/16 with Tom Conway, Regional Director, agreed that (b) (6), (b) (7)(C) will be allowed to express in the Janitorial office. The office's door locks, the room is secure and private. will provide (b) (6), (b) (7)(C) a sign to hang on the door to make sure (b) (6), (b) (7)(C) is not interrupted. Mr. Conway agreed to give (b) (6), (b) (7)(C) in writing letting (b) (6) know to express whenever and how long (b) (6) needs.

WHI Signature: _____ Date: 04/08/2016

Reviewed By: _____ Date: _____

FLSA Narrative

Case Number: 1786713
Legal ID: 4M Building Solutions, Inc.
d/b/a: 4M Building Solutions
Address: 2827 Clark Ave.
St. Louis MO 63103
Telephone: 314-333-9391
Employer ID: 43-1147598

COVERAGE:

Subject establishment operates as a cleaning service for businesses throughout the country. Business originally opened in the early 1978 and the legal entity, 4M Building Solutions, Inc., located at the same address, incorporated 1978 and is a Missouri Corporation. 4M Building Solutions, Inc. is led by Mr. Tim Murch, the President and CEO. See exhibits C1 and C2.

The FLSA 3d employer is Mr. David Burge. Mr. Burge is the day supervisor and is responsible for discretion on all staffing functions, helps to set the rates of pay as well as makes the final decisions on expansion and size of the staff. Mr. Burge is at the establishment 5 days a week. See exhibit C1.

The ADV for the subject location was well above \$500,000 the Fair Labor Standards Act Section 3s1a enterprise coverage is applicable (website says (b) (4) annually). See exhibits C2.

The subject establishment currently employs (b) (4) employees.

(b) (7)(E)

See exhibits B1-B2, C1-C2, and D1.

EXEMPTIONS:

13A1:

None applicable to (b) (6), (b) (7)(C) and limited investigation.

STATUS OF COMPLIANCE:

A Whisard search revealed no history for this employer.

Case was (b) (7)(E) (b) (6), (b) (7)(C), (b) (7)(E) (b) (6), (b) (7)(C) was required to express only on (b) (6), (b) (7)(C) breaks (see exhibit B-1) and that (b) (6), (b) (7)(C) was required to use a janitor's closet or a bathroom provided by Springfield Clinic. Investigation did verify that (b) (6), (b) (7)(C) was required to express in a bathroom. (b) (6), (b) (7)(C) was notified via telephone of the outcome of the investigation.

Period of investigation was 4/8/2014 through 4/7/2016.

A limited investigation was conducted. Case was limited to (b) (6), (b) (7)(C)

FLSA SECTION 6:

The Investigation was limited to 7(r) of the Act.

FLSA SECTION 7:

The Investigation was limited to 7(r) of the Act.

FLSA Section 7(r):

It was found that (b) (6), (b) (7)(C) was forced to express in a small bathroom in a building that (b) (6), (b) (7)(C) didn't work in. (b) (6), (b) (7)(C) (b) (7)(E) (b) (6), (b) (7)(C) was only allowed to express on (b) (6), (b) (7)(C) 15 minute breaks in the morning and the afternoon. This was not found to be the case. Mr. Burge (site supervisor) and Mr. Tom Conway (Regional Manager) both agreed that (b) (6), (b) (7)(C) will be allowed to express in the Janitorial office. The office's door locks, the room is secure and private. Further, they will provide (b) (6), (b) (7)(C) a sign to hang on the door to make sure (b) (6), (b) (7)(C) is not interrupted. Further, Mr. Conway agreed to provide (b) (6), (b) (7)(C) a statement in writing to explain that 4M will allow (b) (6), (b) (7)(C) to express whenever (b) (6), (b) (7)(C) needs to for however long (b) (6), (b) (7)(C) needs to and that regardless of what (b) (6), (b) (7)(C) believes, (b) (6), (b) (7)(C) is not relegated to only expressing during (b) (6), (b) (7)(C) morning and afternoon breaks. Finally that same document will advise (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) may use the manager's office to express from this point forward.

FLSA SECTION 11:

The Investigation was limited to 7(r) of the Act.

FLSA SECTION 12:

The Investigation was limited to 7(r) of the Act.

DISPOSITION:

Final Conference with Mr. Tim Conway (Regional Director) was held on 4/8/16. WHI (b) (6), (b) (7)(C) represented Wage and Hour. The findings of the investigation were discussed. WHI (b) (6), (b) (7)(C) advised that at this time it

was found that 4M needed to provide (b) (6), (b) (7)(C) with more than just a bathroom to express in, even though that is the same space that Springfield Clinic provides their employees. Mr. Burge (site supervisor) and Mr. Tom Conway (Regional Manager) both agreed that (b) (6), (b) (7)(C) will be allowed to express in the Janitorial office. The office's door locks, the room is secure and private. Further, they will provide (b) (6), (b) (7)(C) a sign to hang on the door to make sure (b) (6), (b) (7)(C) is not interrupted. Mr. Conway agreed to provide (b) (6), (b) (7)(C) a statement in writing to explain that 4M will allow (b) (6), (b) (7)(C) to express whenever (b) (6), (b) (7)(C) needs to for however long (b) (6), (b) (7)(C) needs to and that regardless of what (b) (6), (b) (7)(C) believes, (b) (6), (b) (7)(C) is not relegated to only expressing during (b) (6), (b) (7)(C) morning and afternoon breaks. Finally that same document will advise (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) may use the manager's office to express from this point forward.

On 4/08/16, the following PUBS were given: HRG, Nursing Mothers FAWs from website, Section 7r and Fact Sheet 28D and 73.

Recommend case be closed.

(b) (6), (b) (7)(C)

Investigator

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1787312 Originating District: Indianapolis IN District Office
Local Filing Number: 2016-204-09219 Investigating District: Indianapolis IN District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 03/21/2016
Assignment Date: 03/21/2016

Employer Information

Trade Name: Merit Integrated Logistics

Legal Name: Merit Integrated Logistics

Address: 1550 Fairland Road

EIN: EIN Missing

County: Shelby

NAICS Code: 488330

Shelbyville, IN 46176

No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 11/19/2015

BNPI:

To: 04/14/2016

Reinvestigation: ☐

Investigation Type: (b) (7)(E)

Recurring Violation: ☐

Investigation Tool: Limited Investigation

Future Compliance Agreed: ☐

Compliance Status: Not Applicable

Involved in AG: ☐

Recommended Action:

BWFS: ☐

RO/NO Review: ☐

CMP: ☐

Follow Up Investigation: ☒

Litigation: ☐

Other Action: ☐

Civil Action: ☐

Denial of Future Certificate: ☐

Criminal Action: ☐

BW Payment Deadline:

Submit For Opinion: ☐

Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found: 0

Unduplicated Employees Agreed: 0

Total Amount BWs Computed: \$0.00

Total Amount BWs Agreed: \$0.00

Total Amount LDs Computed: \$0.00

Total Amount LDs Agreed: \$0.00

WHISARD Compliance Action Report

Conclusions & Recommendations:

Ent Cov- (b) (7)(E) violations of not providing adequate space
for (b) (6), (b) (7)(C) to express milk - (b) (6), (b) (7)(C) did not return (b) (7)(E)
- Rec Adm Closing

WHI Signature: _____ Date: 04/19/2016

Reviewed By: _____ Date: _____

FLSA Narrative Report

Merit Integrated Logistics, Inc. dba
Merit Integrated Logistics
1550 Fairland Road
Shelbyville, IN 46176
FEIN: Unknown

Corporate Office Address:
29122 Rancho Viejo
San Juan Capistrano, CA 92675

Contact: Kevin Easley, manager

COVERAGE

Merit Integrated Logistics is being subleased by Penske for Kroger grocery stores for Penske. The employer is covered under Section 3 (s)(1)(A) of the Fair Labor Standards Act (FLSA).

The corporation employs sixty (60) employees according to (b) (6), (b) (7)(C) (b) (7)(E) and therefore is required to comply with the Nursing Mothers provisions of the FLSA.

History: One (b) (7)(E) (refer D-23).

(b) (7)(E) (see Exhibit D -1).

This investigation was limited to (b) (6), (b) (7)(C) (b) (7)(E) and the period of investigation was November 19, 2015 to April 1, 2016.

EXEMPTIONS

Exemptions were not investigated as the investigation was limited to (b) (6), (b) (7)(C) (b) (7)(E) related to the Nursing Mothers provisions of the Fair Labor Standards Act.

STATUS OF COMPLIANCE

(b) (6), (b) (7)(C) Status: This investigation was initiated with (b) (7)(E) (b) (6), (b) (7)(C) (b) (7)(E) was not given reasonable break time, was not provided ample space and had been harassed and retaliated against due to expressing breast milk at work. (b) (6), (b) (7)(C) was provided (b) (7)(E) form with (b) (6), (b) (7)(C) acknowledgement of information letter but did not return the signed form. (b) (6), (b) (7)(C) was informed at the time that the statement was taken that it was not the responsibility of the employer to provide refrigeration. Based on the (b) (7)(E) (b) (7)(E) appear to be true. (b) (6), (b) (7)(C) would not return calls or mail from the investigator on 3/28; 3/30 (call and mailing); 4/7 and 4/14.

Refer to Exhibit D-5 through D-16 for pictures (b) (7)(E) (b) (6), (b) (7)(C)

- D-1 Corner of bathroom floor
- D-2 Bathroom outlet hanging out of wall
- D-3 Bathroom plug with breast pump plugged in
- D-4 Breast pump and bottles on the floor
- D-5 (b) (6), (b) (7)(C) with background expressing milk in bathroom
- D-6 Bathroom area with breast pump set up on the floor
- D-7 (b) (6), (b) (7)(C) showing the walk ins while (b) (6), (b) (7)(C) expressing milk
- D-8 Distance between the bathroom stall and where (b) (6), (b) (7)(C) sits expressing milk
- D-9 Distance between the bathroom stalls and (b) (6), (b) (7)(C) set up
- D-10 Expressing area
- D-11 Bathroom

DISPOSITION

(b) (6), (b) (7)(C) did not return repeated calls and mail for (b) (7)(E) Investigation did not begin and the appointment letter was not sent. (b) (7)(E) (b) (6), (b) (7)(C) did not return any calls (refer to D-3). WHI sent the photos provided by (b) (6), (b) (7)(C) (b) (7)(E)

Recommendation: It is recommended the case file be closed administratively. (b) (7)(E)

Publications Provided:

None

(b) (6), (b) (7)(C) WHI
April 19, 2016

WHISARD Compliance Action Report

U.S. Department of Labor Wage and Hour Division

Case ID: 1792216 Originating District: Des Moines IA District Office
Local Filing Number: 2016-180-14934 Investigating District: Des Moines IA District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 05/18/2016
Assignment Date: 06/07/2016

Employer Information

Trade Name: Mercy Medical Center Legal Name: Trinity Health Corporation
Address: 801 5th St. EIN: 31-1373080
County: Woodbury
NAICS Code: 622110
No. Of Employees: (b) (4)
Sioux City, IA 51101

Investigation Information

Period Investigated From: 07/20/2014 BNPI: 464
To: 07/20/2016 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☐
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

25 hrs. Coverage w/ 1 affected EE not exempt from FLSA Section 7 and est has more than 50 EEs. One FLSNM violation. ER did not afford the necessary privacy within the investigation period. The employer has come into compliance and ATC in the future. FC at the est. 07-08-16 with HR Director Julie Anfinson and conference call w/ Attorney Gene Le Suer. The ER ATC in the future. (b) (6), (b) (7)(C) was advised of disposition by telephone 07-20-16. Left FS #073.

WHI Signature: _____ Date: 07/21/2016

Reviewed By: _____ Date: _____

WHISARD Compliance Action Report

U.S. Department of Labor Wage and Hour Division

Case ID: 1796574 Originating District: Des Moines IA District Office
Local Filing Number: 2016-180-15007 Investigating District: Des Moines IA District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 07/12/2016
Assignment Date: 07/13/2016

Employer Information

Trade Name: Whispering Willows Assisted Living Legal Name: Liebe, Inc.
Address: 601 Dawn Ave EIN: 42-1377246
Fredericksburg, IA50630 County: Chickasaw
NAICS Code: 62331
No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 07/18/2014 BNPI:
To: 07/16/2016 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☐
Compliance Status: Not Applicable Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

18.75 hrs; FLSNM ltd inv; FC 8/2/16 w Brent Olsen, manager; subject firm not covered has ^{(b) (4)} ees; Pubs:FLSA HRG, 516, 541, 778, 785, CL-101, Fact Sheets 17A, 21, 22, 23, 44, and posters were provided and discussed; Rec admin closure.

WHI Signature: _____ Date: 08/03/2016

Reviewed By: _____ Date: _____

FLSNM NARRATIVE REPORT
2016-180-15007
Case ID: 1796574
FEIN# 42-1377246

Liebe, Inc. d/b/a
Whispering Willows Assisted Living & Memory Lane
601 Dawn Avenue
Fredericksburg, IA 50630

Contact: Brent Olsen, Manager 563 237-5075

COVERAGE

ENTERPRISE COVERAGE

Subject firm is an assisted living company which has 1 other branch in Nashua, Iowa. The main office is 601 Dawn Avenue, Fredericksburg, Iowa. The corporation has ADV for this location only of (b) (4) for 2015; (b) (4) for 2014 and (b) (4) for 2013. Betty Bill is listed as the firm's president.

FLSA Section 203(s)(1) enterprise coverage for the investigative period of July 18, 2014 through July 16, 2016.

FLSNM Coverage: Employees are entitled to protection under Section 7(r) of the FLSA when subject firm employees at least 50 or more employees. The Fredericksburg, Iowa location employs (b) (4) people and the Nashua, Iowa location employs (b) (4) people. There is no coverage under FLSNM as this subject firm has a total of (b) (4) employees. (Exhibit C-1(b))

Period of Investigation

07/18/2016 through 07/16/2016

HISTORY There is no history for Liebe, Inc. or Whispering Willows Assisted Living & Memory Care.

MODO

Liebe, Inc. dba Whispering Willows Assisted Living & Memory Care was associated with Liebe, Inc. MODO August 1, 2016. (Exhibit D-1 & D-2)

(b) (7)(E) case file limited to one affected employee.

EXEMPTIONS

None applied or misapplied within the limited scope of the investigation.

Status of Compliance:

(b) (6), (b) (7)(C) (b) (7)(E) (b) (6), (b) (7)(C) was originally allowed breaks to express breast milk twice per day which was all that (b) (6), (b) (7)(C) needed. (b) (6), (b) (7)(C) (b) (7)(E) (b) (6), (b) (7)(C) was told July 7, 2016 that (b) (6), (b) (7)(C) did not need to take that many breaks and should only be taking one break per day. (Exhibit B-1)

(b) (7)(E) as Brent Olsen, manager acknowledged that he had allowed (b) (6), (b) (7)(C) time to express breast milk. Mr. Olsen further (b) (7)(E) (b) (6), (b) (7)(C) was working in the Memory Lane which required another person to relieve (b) (6), (b) (7)(C) for this purpose. Mr. Olsen also explained that (b) (6), (b) (7)(C) took advantage of this break and extended it to half an hour or longer each time. He asked (b) (6), (b) (7)(C) to shorten (b) (6), (b) (7)(C) breaks as it was placing a burden on the other employees.

Section 6 Minimum Wage: No violations within the limits of this investigation.

Section 7 Overtime: No violations within the limits of this investigation.

Section 11 Recordkeeping: No violations within the limits of this investigation.

Section 12 Child Labor: No violations within the limits of this investigation.

Disposition: A final conference was held via telephone on August 2, 2016 with Brent Olsen, Manager. It was explained that there was no coverage since the company had less than 50 employees. Mr. Olsen acknowledged that he understood and stated he would call Wage Hour if he had any questions in the future.

WHI (b) (6), (b) (7)(C) notified (b) (6), (b) (7)(C) of the findings via telephone on August 1, 2016.

Publications

FLSA HRG, 516, 541, 778, 785, CL-101, Fact Sheets 17A, 21, 22, 23, 44, and posters were provided and discussed.

I recommend the case be administratively closed.

(b) (6), (b) (7)(C)

WHI

August 3, 2016

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1803636 Originating District: Indianapolis IN District Office
Local Filing Number: 2017-204-09407 Investigating District: Indianapolis IN District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 10/07/2016
Assignment Date: 10/11/2016

Employer Information

Trade Name: Poly-Wood Legal Name: Poly-Wood, LLC
Address: 1001 W Brooklyn St EIN: 47-4665663
Syracuse, IN46567 County: Kosciusko
NAICS Code: 337122
No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 10/27/2014 BNPI:
To: 10/26/2016 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
No Violation found for this act / Not Applicable					\$0.00	\$0.00	

WHISARD Compliance Action Report

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
Failure to provide reasonable break time / Agree to Comply	1	0	\$0.00	\$0.00	\$0.00	\$0.00	
Failure to provide adequate space / Agree to Comply	1	0	\$0.00	\$0.00	\$0.00	\$0.00	
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	
Total Violations Under FLSNM:	2						\$0.00

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

FLSNM limited Investigation, 3(s)(1)(A) coverage, +50 EEs. (b) (7)(E) . Sec. 207 violations: ER failed to provide adequate space to express milk, space was a bathroom. (b) (7)(E) was also not provided time outside of (b) (7)(E) normal 15 min break, and 30 min lunch. ER has since provided a new space (compliance) ER ATC, ER signed ECA. Rec. close (b) (7)(E) rvw.

WHI Signature: _____ Date: 12/02/2016

Reviewed By: _____ Date: _____

FLSNM NARRATIVE

Poly-Wood, LLC
D/b/a Polywood
1001 West Brooklyn St.
Syracuse, IN 46567

Case ID: 1803636
FEIN: 47-4665663

Contact Person/s:

Ryan Zimmerman
Director of Human Resources
1001 West Brooklyn St.
Syracuse, IN 46567
Phone: (574) 325-5092
Email: rzimmerman@polywoodinc.com

Attorney:

Craig W. Wiley
Jackson Lewis P.C.
10 West Market Street Suite 2400
Indianapolis, IN 46204
Phone: (317) 489-6935
Email: Craig.Wiley@jacksonlewis.com

Forward all future correspondence to Ryan Zimmerman as stated above.

COVERAGE

Poly-Wood, LLC is a manufacturer of outdoor furniture. They were incorporated in the state of Indiana in 1991. They are headquartered in Syracuse, IN and operate manufacturing within the state of Indiana. The firm sells its products to licensed dealers throughout the US.

Enterprise Coverage:

Section 203(s)(1)(a) of the FLSA is applicable throughout the entire investigative period. The employer grosses over \$500,000 annually; the employer would not provide a dollar amount, however, stipulated coverage through their attorney (see Exhibit C-1b), and has two (2) or more employees engaged in interstate commerce or in the production of goods for commerce, or has employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person as defined under this section; specifically, employees who work directly in the production of lawn furniture that is shipped to all states in the US.


Section 207(r) of the FLSA is applicable to the employer. The employer has 270 employees at the establishment (see Exhibit E-1b).

Period of Investigation:

This investigation was limited to (b) (6), (b) (7)(C) (b) (7)(E) the period of investigation included: October 27, 2014 to October 26, 2016

MODO:

The subject firm is a Multi-Unit Employer with all branches currently operating within the state of Indiana. The firm operates three (3) locations, one (1) is the firm's headquarters located in Syracuse, IN with a separate sites operating within the state of Indiana. The Indianapolis District Offices is responsible for this geographic area. (b) (7)(E)



Employee Eligibility:

(b) (6), (b) (7)(C) child has not reached age one (1). (b) (6), (b) (7)(E) works for a covered employer who has more than 50 employees. No undue hardship exists.

EXEMPTIONS

(b) (6), (b) (7)(C) is not exempt from Section 207(r) (see Exhibit B-1); the employer is covered and has more than 50 employees.

Other exemptions were not explored as the investigation was limited to (b) (6), (b) (7)(C) (b) (7)(E) related to the Nursing Mothers Provisions (Section 207(r)) of the Fair Labor Standards Act.

STATUS OF COMPLIANCE

History: No History was found for Poly-Wood, LLC.

Reason for investigation:

This limited investigation was initiated (b) (7)(E) (b) (6), (b) (7)(C) (b) (7)(E) Poly-Wood failed to provide adequate space to express breast milk, failed to provide reasonable break time to express breast milk, and retaliated against (b) (6), (b) (7)(C) (Refer to WH-3 (b) (7)(E) -

Section 207(r)(1)(A):

The employer failed to provide ...a reasonable break time... for (b) (6), (b) (7)(C) ...to express breast milk for (b) (6), (b) (7)(C) nursing child...each time such employee has need to express the milk... from the period of April 26, 2016 through October 26, 2016.

The employer only allowed (b) (6), (b) (7)(C) to take breaks during (b) (6), (b) (7)(C) fifteen (15) minute paid break, and (b) (6), (b) (7)(C) thirty (30) minute unpaid lunch break. (b) (6), (b) (7)(C) was forced to use (b) (6), (b) (7)(C) vehicle before and after (b) (6), (b) (7)(C) shifts to express milk.

During the initial Ryan Zimmerman and Jeremy Dreier admitted to the violation, present were WHI (b) (6), (b) (7)(C) and Accounting Manager, Shelly Stump. During the initial conference Jeremy Dreier also asked WHI (b) (6), (b) (7)(C) if, ...the employer was at the “mercy of any nursing mother” whenever (b) (6), (b) (7)(C) may need a break (see Exhibit E-1b for Initial conference notes)... Present were – Ryan Zimmerman, Shelly Stump, and WHI (b) (6), (b) (7)(C) (see exhibit E-1e for a roster of representatives that were in attendance at the initial conference).

Section 207(r)(1)(B):

The employer failed to provide ...a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public... from the period of April 26, 2016, through October 26, 2016

The employer forced (b) (6), (b) (7)(C) to use a woman's bathroom located in the break room in the building that (b) (6), (b) (7)(C) worked (see Exhibit D-4a to D-4c for photographs) (see Exhibit E-1c for a layout of the bathroom). Ryan Zimmerman and Jeremy Dreier admitted to the violation during the initial conference –

Present were WHI (b) (6), (b) (7)(C) and Accounting Manager, Shelly Stump.

(b) (7)(E) During the walk-in Initial Conference, the employer provided records demonstrating (b) (6), (b) (7)(C) performance (see Exhibits D-2a to D-2s for the contents of (b) (6), (b) (7)(C) personnel file). It was determined that (b) (6), (b) (7)(C) was terminated due to falling asleep at (b) (6), (b) (7)(C) workstation (see Exhibit D-2i).

DISPOSITON

A final conference was held via telephone on 12/02/2016 present were Director of Human Resources Ryan Zimmerman, Jeremy Dreier, CFO Shane Rogers, Attorney Craig Wiley and WHI (b) (6), (b) (7)(C) representing the Department of Labor Wage and Hour Division. The investigator explained coverage, and that Poly-Wood met the coverage aspects of Sections 203(s)(1)(A) and 207(r) of the Fair Labor Standards Act.

The investigator discussed the nursing mother provisions laid out in Section 207(r) of the Fair Labor Standards Act, including the violations that had occurred at the establishment.

Employer's reason/s for violations:

The investigator asked the employer's reason for the violations. Mr. Zimmerman stated he was unaware of the nursing mother provisions of the FLSA. He stated that he was following the State of Indiana requirements that stipulated not to use a bathroom "stall".

The employer is currently in compliance with Section 207(r), the space that is provided to nursing mother employees is shielded from view, it is free from intrusion from both the public and co-workers, it has a locking door, and it is not a bathroom. The investigator explained that a bathroom cannot be utilized as a space for nursing mothers. The investigator explained that the employer is required to ensure any nursing mother takes breaks to express milk as needed. Mr. Zimmerman claimed to understand and agreed to future compliance. Mr. Zimmerman stated that the employees will not be retaliated against. Mr. Zimmerman agreed to future compliance by ensuring that the current space as well as any future space will meet the requirements laid out in Section 207(r) of the FLSA.

The investigator discussed the child labor provisions of the FLSA. Mr. Zimmerman claimed to understand and agreed to continue to comply.

Enhanced Compliance Agreement:

During the final conference on 12/02/2015 WHI (b) (6), (b) (7)(C) discussed the terms of the Enhanced Compliance Agreement (ECA) between The Wage and Hour Division and Poly-Wood, LLC. The employer claimed to understand and agreed to the terms; Director of Human Resources, Ryan Zimmerman signed the ECA on 12/02/2016 (refer to tab marked ECA).

(b) (7)(E)

Result for (b) (6), (b) (7)(C)

No monetary findings resulted during the investigation. On 10/31/2016 (b) (6), (b) (7)(C) was notified via telephone that (b) (6), (b) (7)(E). On 12/02/2016 a call was placed to (b) (6), (b) (7)(C) to advise (b) (6), (b) (7)(C) on the results of the investigation. (b) (6), (b) (7)(C) was not able to be reached and had no voicemail option.

Publications Provided:

HRG(to Ryan Zimmerman on 10/26/2016), Fact Sheets: 28D (to Ryan Zimmerman on 10/26/2016), 44, 73, 77a

Recommendations:

Administrative close (b) (7)(E).

(b) (6), (b) (7)(C), Wage and Hour Investigator

12/02/2016

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1803664 Originating District: Grand Rapids MI District Office
Local Filing Number: 2017-191-00568 Investigating District: Grand Rapids MI District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 10/07/2016
Assignment Date: 11/07/2016

Employer Information

Trade Name: Select Medical Legal Name: Select Specialty Hospital
Address: 300 North Avenue EIN: 75-2962822
6th Floor County: Calhoun
NAICS Code: 622110
Battle Creek, MI 49017 No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 11/10/2014 BNPI: 103
To: 11/09/2016 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☒
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

Firm is a medical staffing company in Grand Rapids, MI. FLSA Enterprise coverage applies and FLSA NM coverage applies. Firm has (b) (4) EEs at this location. FLSANM provisions violated as EE was not provided with reasonable break time for purposes of expressing milk. ER ATC by extending break times and permitting EE to take breaks as needed. ER also ATC by training shift managers on nursing mothers provisions per FS 73. ER ATC. (b) (4) contacted on 11/10/16. No history exists. Recommend admin close.

WHI Signature: _____ Date: 11/10/2016

Reviewed By: _____ Date: _____

FLSA Narrative

Select Specialty Hospital
300 North Avenue -6th Floor-
Battle Creek, MI 49017
Phone: (269) 964.9075
Fax: (269) 964.4566

Brenda Teegardin
300 North Avenue -6th Floor-
Battle Creek, MI 49017
Phone: (269) 964.9075
Fax: (269) 964.4566
Bteegardin@selectmedical.com

FEIN: 75-2962822

Case ID: 1803664
Local Filing: 2017-191-00568

CASE ASSIGNMENT INFORMATION

This limited FLSA – Nursing Mothers (NM) investigation was initiated (b) (7)(E) (b) (6), (b) (7)(C) At that (b) (7)(E) violations of the FLSA nursing mothers provisions as the firm did not allow a reasonable amount of time for purposes of expression (b) (6), (b) (7)(E) the firm violated the FLSA nursing mothers provisions as (b) (6), (E) was required to walk from the 6th floor to the 4th floor of the hospital to express in the lactation room. Furthermore she explained that the firm had a policy that only allowed employees to express during their normal break times [See Case Assignment Information and Exhibit B-1].

Investigation History

Select Medical Case ID: 1803664

No investigative history exists

Investigation Period: 11/10/2014 – 11/09/2016 [See Exhibit C-0].

Mapping: Select Medical operates 11 locations in Michigan and 93 long term acute care centers in 42 states: Alabama, Arizona, Arkansas, Delaware, Florida, Georgia, Indiana, Iowa, Kansas, Kentucky, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, and Wisconsin. Of these, the headquarters is located at: 47140 Gettysburg Rd. Mechanicsburg, PA 17055. Addresses of all Michigan locations is found below:

[See Exhibits C-0, C-1, C-3, and C-4].

Select Specialty Hospital - Flint, Inc.
401 South Ballenger Highway
Flint, MI 48532-3638
Genesee County
Great Lakes Specialty Hospital - Hackley, LLC
d/b/a Select Specialty Hospital - Muskegon
1700 Clinton Street, 2 South, 2nd and 3rd Floors
Muskegon, MI 49442-5502
Muskegon County

Select Specialty Hospital - Macomb County, Inc. 215 North Avenue, Suite 200 Mount Clemens, MI 48043-1716 Macomb County
Select Specialty Hospital - Ann Arbor, Inc. 5301 East Huron River Drive, 7th Floor Ypsilanti, MI 48197-1051 Washtenaw County
Great Lakes Specialty Hospital- Oak, LLC d/b/a Select Specialty Hospital - Grand Rapids 200 SE Jefferson Street, 5th Floor Grand Rapids, MI 49503-4502 Kent County **Admin Space Address 310 Lafayette SE, Suite 302 Grand Rapids, MI 49503-4502
Select Specialty Hospital - Pontiac, Inc. 44405 Woodward Avenue, 8th Floor Pontiac, MI 48341-1601 Oakland County

Select Specialty - Downriver, LLC d/b/a Select Specialty Hospital - Wyandotte, LLC 2333 Biddle Avenue, 8th Floor Wyandotte, MI 48192-4668 Wayne County
Select Specialty Hospital - Northwest Detroit, Inc. 6071 West Outer Drive, 7th Floor Detroit, MI 48235-2624 Wayne County
Select Specialty Hospital - Saginaw, Inc. 1447 North Harrison Street, 7th and 8th Floors Saginaw, MI 48602-4727 Saginaw County
Select Specialty Hospital - Kalamazoo, Inc. d/b/a Select Specialty Hospital - Battle Creek 300 North Avenue, Units 6100A Hall and 6200B Hall Battle Creek, MI 49017-3307 Calhoun County
Select Specialty Hospital - Grosse Pointe, Inc. 22101 Moross Road Detroit, MI 48236-2148 Wayne County

FLSA COVERAGE

Background

Select Medical is one of the nation's largest providers of specialized hospital, rehabilitative, and outpatient care personnel and employs approximately (b) (4) people on an annual basis. The Battle Creek location alone employs (b) (4) employees and operates out of Bronson Hospital. Mr. David S. Chernow serves as the president and is supported by 9 vice presidents and (b) (4) additional employees who serve as

secretaries and vice presidents. Ms. Brenda Teegardin serves as the HR coordinator for the Battle Creek location and was the central point of contact. Payroll is processed on a weekly basis [See Exhibits C-0 – C-5 and E-1].

Enterprise Coverage - 203(s)(1)(b)

The firm is covered by the FLSA as it is an institution primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises of such institution [See Exhibits B-1, C-0, C-3, C-5, D-2, E-1, and E-2].

FLSA Nursing Mothers Coverage

FLSA nursing mothers provisions were applicable as the firm employs over 50 workers at the Battle Creek location. In fact, the site employs approximately (b) (4) health care professionals [See Exhibits B-1, C-0 – C-5, and D-8].

Section 203(d) – Employer

Mr. David S. Chernow is the employer as defined by the Act as he supervises operations at all operations, dictates work to be performed, has ability to hire and fire employees, and sets company policies and is recognized as the head of the organization [See Exhibit C-0 and C-2]

MODO Instructions

Select Medical operates 11 locations in Michigan and 93 long term acute care centers in 42 states: Alabama, Arizona, Arkansas, Delaware, Florida, Georgia, Indiana, Iowa, Kansas, Kentucky, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, and Wisconsin. Of these, the headquarters is located at: 47140 Gettysburg Rd. Mechanicsburg, PA 17055. The Northern New Jersey DO is responsible for this geographic region. (b) (7)(E)

[See Exhibit D-0].

FMLA COVERAGE

FMLA coverage applies as the firm did not employed 50 or more employees in all workweeks of the investigative period [See Exhibits B-1, C-0, C-1, D-8, and E-1].

EXEMPTIONS

No exemptions were claimed or found to be applicable during the period of investigation

STATUS OF COMPLIANCE

FLSA – Nursing Mothers

(b) (6), (b) (7)(C) (b) (7)(E) violations of the nursing mother's provisions as the firm (b) (7)(E)

Failed to provide a space for purposes of lactation on the 6th floor of the hospital
Failed to provide a reasonable break time to express milk
[See Case Assignment Information].

(b) (7)(E)

Failure to provide a space for purposes of lactation - (b) (7)(E)

Although (b) (6), (b) (7)(C) (b) (7)(E) the firm failed to provide an adequate space for lactation, (b) (7)(E). On-site inspection of the facilities revealed that a dedicated lactation room was provided on the 4th floor of the hospital. The room met all necessary criteria as it was a dedicated functional space used for expressing breast milk. The space was found to be shielded from view and free from any intrusion from co-workers and the public. Furthermore, (b) (7)(E), a lactation room provided on the 4th floor of the hospital would meet this requirement as the Act does not have specific distance criteria [See Case Assignment Information and Exhibits B-1, C-0, C-1, D-4 – D-6 and E-0].

Failure to Provide Reasonable Break Time – Substantiated

This violation was cited as the firm did not provide reasonable break time to express milk. This was revealed as the firm had an informal policy that only allowed nursing mothers to express during their two regularly scheduled 15 min breaks and/or the 30 min unpaid lunch. These women were not allowed to exceed the aforementioned timeframes when expressing milk nor were they permitted to take additional breaks to express throughout their shifts. A time study was conducted and revealed that traveling from the 6th floor to the lactation room on the 4th floor took about 4 – 5 minutes (one way / 10 min round trip), thus employees were only given approximately 5 minutes to express during their 15 min breaks (or 20 min during their lunch break) [See Case Assignment Information and Exhibits B-1, C-1, C-5, and D-4].

Note

It should be noted that (b) (6), (b) (7)(C) child was born on January 8, 2016, thus (b) (6), (b) (7)(C) one year period would expire on January 8, 2017 [See Exhibit B-1].

DISPOSITION

WHI (b) (6), (b) (7)(C) conducted the final conference with Ms. Brenda Teegardin, HR, on 11/10/2016. This meeting took place via phone [See Exhibit C-5]. It should be noted that a preliminary FC was conducted on site on 11/09/2016. At said conference the WHI reviewed FLSA coverage and provisions as they applied to the firm, noting that in order to comply with the FLSA a firm must:

1. Pay all non-exempt employees at least the minimum wage
2. Pay all non-exempt employees at least T-1/2 for hours worked in excess of forty in a workweek
3. Keep and maintain records as required by part 516
4. Comply with all applicable Child Labor regulations

The investigator explained Section 203(s)(1)(A) and 203(s)(1)(B) coverage of the employer as it pertained to the firm, while explaining that all employees were covered under the FLSA for the entire investigative period [See Exhibit C-5]. (b) (6), (b) (7)(C) also explained that the FLSA nursing mothers provisions extended to the firm as they employed (b) (4) health care professionals at the Battle Creek /Bronson Hospital location [See

Exhibit C-5].

All nursing mother's provisions were discussed with the employer. During this conversation it was noted that the floor on the 4th floor was sufficient to meet the criteria established by the Act [See Exhibit C-5].

The violation that was cited for failure to provide a reasonable break time was also discussed with the employer at the initial and final conferences. During the discussion it was explained that the firm needed to provide employees with reasonable time to express milk [See Exhibit C-5]. WHI (b) (6), (b) (7)(C) explained that in order to do this, the firm should not restrict time used for expression of milk to only the regularly scheduled break times. Elaborating, (b) (6), (b) (7)(C) stated that nursing mothers should be permitted to take breaks as needed to express. (b) (6), (b) (7)(C) noted that these additional breaks need not be compensated but granted for a period up to one year after the birth of a child. The employer recognized the violation and ATC by:

Educating all charge nurses (managers) of the nursing mother's provisions and distributing Fact Sheet 73 to all lead nurse or managerial personnel. (immediate implementation)

Extending the duration of the break time to allow for full expression of milk. (immediate implementation)

Allowing all nursing mothers to take breaks as needed for purposes of expressing milk. (immediate implementation)

Allowing employees to leave their work phones at the desk so as to not be called to work or interrupted during said time periods. (immediate implementation)

[See Exhibit C-5]

After this discussion the employer committed to compliance.

(b) (6), (b) (7)(C) Notification

On 11/10/2016 WHI (b) (6), (b) (7)(C) contacted (b) (6), (b) (7)(C) and informed (b) (6), (b) (7)(C) of the results of the investigation. At that time (b) (6), (b) (7)(C) was told that the employer agreed to comply by:

Educating all charge nurses (managers) of the nursing mother's provisions and distributing Fact Sheet #73 to all lead nurse or managerial personnel

Extending the duration of the break time to allow for full expression of milk (immediate

implementation)

Allowing all nursing mothers to take breaks as needed for purposes of expressing milk (immediate implementation)

Allowing employees to leave their work phones at the desk so as to not be called to work or interrupted during said time periods (immediate implementation)

(b) (6), (b) (7)(C) noted that she was very satisfied with the results of the investigation and thanked the WHD for conducting the investigation.

Publications discussed and given to employer: The Handy Reference Guide to the Fair Labor Standards Act (HRG – WH 1282), FS 28, FS 44, FS 77-A, FS 73 [See Exhibits D-1 and C-5].

(b) (7)(E)

[REDACTED]

[REDACTED]

Recommendation: WHI (b) (6), (b) (7)(C) recommends that this case be administratively closed

Correspondence

All future correspondence regarding FLSA compliance by Select Medical should be sent to Brenda Teegardin at 300 North Avenue -6th Floor- Battle Creek, MI 49017. She can also be reached via phone at (269) 964.9075, via fax at (269) 964.4566, or via email at Bteegardin@selectmedical.com.

Select Medical Case ID: 1803664

(b) (6), (b) (7)(C)

Wage and Hour Investigator

11/10/2016

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1810884 Originating District: Minneapolis MN District Office
Local Filing Number: 2017-250-09612 Investigating District: Minneapolis MN District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 01/10/2017
Assignment Date: 01/11/2017

Employer Information

Trade Name: Obama Elementary; St. Paul Public
Address: 707 Holly Ave.

Saint Paul, MN 55104

Legal Name: Independent School District 625
EIN: 41-0901311
County: Ramsey
NAICS Code: 09740
No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 09/01/2016 BNPI: 6
To: 02/14/2017 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Compliance (no violations found) Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

18hrs. (b) (7)(E) wrongful term, inadequate space, inadequate time, incorrect OT pd. (b) (7)(E)
(b) (7)(E) Inv limited to (b) (7)(E) -space, break time & OT, as (b) (7)(E) pursuing wrongful term w/union. No viols (b) (7)(E)
(b) (7)(E). No OT viol- (b) (7)(E) paid more than FLSA req due to CBA. FC held by phone 2/22/17 w/ ER Nancy
Cameron, General Counsel. (b) (7)(E) notified 2/22/17 & will pursue 16b Right w/union. Pubs: HRG, FS 44,73, FLSA, FLSA
NM FAQs&final rule, Regs 516, 778,779,785. Rec: Admin cls

WHI Signature: _____ Date: 02/22/2017

Reviewed By: _____ Date: _____

FLSA & FLSA NM NARRATIVE

Legal Name: Independent School District 625

Trade Name: St. Paul Public Schools

Obama Elementary School

Address: 707 Holly Ave

St. Paul, MN 55104

651-293-8625

Case ID: 1810884

EIN: 41-0901311

Employer Representative(s):

Nancy Cameron, General Counsel

St. Paul Public Schools

NANCY.CAMERON@spps.org

651-767-8137

COVERAGE

Structure: Government; Public School

MODO: The Minneapolis DO is the MODO for this employer. (b) (7)(E)

(Exhibit D-1)

History: No history for this employer in WHISARD under FLSA NM.

Business Purpose: The subject is a public school district.

NAICS Code: 09740 Local School Boards or Districts.

3(s)1B Named Enterprise: Health Care/Education

Current Number of Employees: 6,000 district-wide

The employer was not able to claim an undue hardship in providing space, as the employer had

well over 50 employees.

The operating budget for the school district was not provided, but the employer's representative confirmed that they are covered under the FLSA as a public agency.

Investigation Type: Limited Investigation

Period of Investigation: 09/01/2016 – 02/14/2017

The investigation was limited to (b) (6), (b) (7)(C) (b) (7)(E) for the time period of the current school year.

(Exhibits C-1, C-2)

3(d) Employer(s):

(b) (6), (b) (7)(C), Principal

(b) (6), (b) (7)(C), Assistant Principal

(b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) are both 3(d) employers under the FLSA. They both participate in hiring, firing, and employee reviews. They supervise employees and are able to take disciplinary actions. Wage rates are set by the union.

EXEMPTIONS

Section 13(a)(1):

Exemptions under 13(a)(1) were only reviewed as they pertain to (b) (6), (b) (7)(C) position and (b) (6), (b) (7)(C) eligibility for break time for nursing mothers under Section 7 of the Fair Labor Standards Act. The exemptions under 29 CFR 541 are **not applicable** to (b) (6), (b) (7)(C) position as a Teaching Assistant and Bus Aide because (b) (6), (b) (7)(C) is paid hourly and (b) (6), (b) (7)(C) primary duty is not teaching.
(Exhibits A-1, B-3, C-1, C-2)

No other exemptions were reviewed due to the limited nature of this investigation.

STATUS OF COMPLIANCE

Reason for Investigation: (b) (7)(E)

This investigation was based on (b) (7)(E) (b) (6), (b) (7)(C) (b) (7)(E) (b) (6), (b) (7)(C) is a

nursing mother and that (b) (6), (b) (7)(C) was not provided with adequate space or adequate time to express milk, that (b) (6), (b) (7)(C) was wrongfully terminated due to being a nursing mother, and that (b) (6), (b) (7)(C) wasn't paid overtime properly.

(b) (6), (b) (7)(C)

(b) (7)(E)

(b) (7)(E)

(b) (6), (b) (7)(C) was informed of the results of the investigation on 2/22/17 and notified of (b) (6), (b) (7)(C) private right of action under 16(b) of the FLSA. (Exhibit B-3)

Section 6: Minimum Wage: No minimum wage violations were disclosed.

Section 7: Overtime: No overtime violations were disclosed.

Although (b) (6), (b) (7)(C) (b) (7)(E) (b) (6), (b) (7)(C) was not paid overtime properly, the time and pay records showed that (b) (6), (b) (7)(C) was paid overtime in compliance with the FLSA. The employee was paid overtime after 8 hours in a day in several workweeks, per the union agreement. This was more beneficial than the requirements of the FLSA.

Section 7(r): Break Time for Nursing Mothers: No violations were disclosed.

Break Time

(b) (6), (b) (7)(C) (b) (7)(E) although (b) (6), (b) (7)(C) was provided with break time to pump/express milk, it was not enough time.

(b) (6), (b) (7)(C) said that prior to (b) (6), (b) (7)(C) employment (b) (6), (b) (7)(C) was expressing milk once every 2-3 hours. When (b) (6), (b) (7)(C) started working, (b) (6), (b) (7)(C) combined (b) (6), (b) (7)(C) paid breaks with (b) (6), (b) (7)(C) lunch break and expressed milk for approximately 45 minutes to one hour each day. (b) (6), (b) (7)(C) also said that (b) (6), (b) (7)(C) would take one or two 5 minute breaks in the day to go to the bathroom to do impressions, so that (b) (6), (b) (7)(C) wouldn't leak between expressions.

The employer indicated that (b) (6), (b) (7)(C) was able to use the space whenever (b) (6), (b) (7)(C) needed to express milk and that they did not discuss the frequency that (b) (6), (b) (7)(C) needed for the milk expressing. (b) (6), (b) (7)(C) said that there were times that (b) (6), (b) (7)(C) was not able to express milk during (b) (6), (b) (7)(C) normal break time and that (b) (6), (b) (7)(C) would notify (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) needed to express milk, although it was late. (b) (6), (b) (7)(C) said that (b) (6), (b) (7)(C) was always permitted to take a break when it was needed.

(Exhibits B-2, B-3, D-2)

(b) (7)(E)

Space

(b) (6), (b) (7)(C) was able to use a vacant office for the expression of milk. (b) (6), (b) (7)(C) (b) (7)(E) the space was not adequate because it was not free from intrusions. (b) (6), (b) (7)(C) further (b) (7)(E) (b) (6), (b) (7)(C) was frequently interrupted and that (b) (6), (b) (7)(C) had to have the baby dropped off during (b) (6), (b) (7)(C) lunch break, so that (b) (6), (b) (7)(C) could nurse (b) (6), (b) (7)(C) baby in (b) (6), (b) (7)(C) car.

(b) (7)(E). The employer had a vacant office space that was used for the worker to express milk. The office was vacant when (b) (6), (b) (7)(C) was employed and the employer said that they covered the windows of the room and put a sign up when it was in use. The employer further stated that there was no reason that other workers would have needed to enter that office at any time, let alone when the worker was expressing milk. The office had a lock on the door and was shielded from view. The office had a table and a desk and was functional.

(Exhibits B-2, B-3, D-4)

Wrongful Termination

(b) (7)(E) was excluded from the investigation, as (b) (6), (b) (7)(C) was pursuing this matter with union representation. The investigation was limited to the remaining (b) (7)(E).

Section 11: Recordkeeping: No recordkeeping violations were disclosed.

Section 12: Child Labor: No child labor violations were disclosed.

The employer did not typically hire minors and did not have any minors employed during the period of investigation.

Computations: Back wages were not calculated, as no violations were disclosed.

DISPOSITION

A final conference was held on 2/22/17 by phone with General Counsel Nancy Cameron and Wage Hour Investigator (WHI) (b) (6), (b) (7)(C). The provisions of the FLSA and FLSA NM were discussed in detail, as well as the remedies for non-compliance.

The employer was informed that no violations were disclosed. Although the violations (b) (7)(E) the employer was asked to make sure to provide reasonable break time in the future to nursing mothers, even if the time would result in unpaid breaks.

The employer was informed of the penalties for future non-compliance and was informed of the DOL-WHD investigative authority. WHI (b) (6), (b) (7)(C) notified the employer of (b) (6), (b) (7)(C) 16(b) Private Right of Action regarding the wrongful termination (b) (7)(E) (*Exhibit E-1*)

(b) (6), (b) (7)(C) was informed of the results of the investigation on 2/22/17 by phone and was informed of (b) (6), (b) (7)(C) private rights under the FLSA.

Publications: FLSA, Handy Reference Guide, Minimum Wage Poster (English), Regulations 516, 541, 570, 578, 579, 778, 779, 785, Fact Sheets 44, 73, 77a, FLSA Nursing Mothers FAQs

Recommendation: Close case administratively.

(b) (6), (b) (7)(C)
Wage Hour Investigator

Date

WHISARD Compliance Action Report

U.S. Department of Labor Wage and Hour Division

Case ID: 1812046 Originating District: Columbus OH District Office
Local Filing Number: 2017-163-16284 Investigating District: Columbus OH District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 01/24/2017
Assignment Date: 01/24/2017

Employer Information

Trade Name: Muggswigz Coffee & Tea Co. Legal Name: Muggswigz, Ltd.
Address: 5854 Fulton Dr NW EIN: 04-3677022
County: Stark
NAICS Code: 445299
Canton, OH44702 No. Of Employees: (b) (6)

Investigation Information

Period Investigated From: 02/07/2015 BNPI:
To: 02/05/2017 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: 06/25/2017
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	1	1	\$406.91	\$406.91	\$0.00	\$0.00	

WHISARD Compliance Action Report

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	1	Unduplicated Employees Agreed:	1
Total Amount BWs Computed:	\$406.91	Total Amount BWs Agreed:	\$406.91
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

55.75 hrs.FLSNM. Sec 3(s)(1)(A). (b) (6), (b) (7)(C) [REDACTED], (b) (7)(E) [REDACTED] ER failed to provide [REDACTED] w/adequate space as nursing mom. ER termin [REDACTED] for unplug sec camera to have privacy in room [REDACTED] was allowed to use. [REDACTED] ER req'd all EEs to clock out for all breaks. ER ATC but states he didn't t viol law. ER ATP BWs [REDACTED] was advs of ER's offer but refus & advs of 16(b) rights. [REDACTED] later cont WHI & decid to accept BWs from ER. Receipt confirm'd. ER had [REDACTED] sign release. HRG, RK,FS72.

WHI Signature: _____ Date: 06/16/2017

Reviewed By: _____ Date: _____

Muggswigz Ltd.
d.b.a.: Muggswigz Coffee & Tea Co.
5854 Fulton Drive NW
Canton, OH 44718
Phone: (330) 754-1017
EIN: 04-3644022

Second Addendum

(b) (7)(E), (b) (6), (b) (7)(C), advised WHI (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) would be pursuing a private right of action, (b) (6), (b) (7)(C) subsequently informed WHI (b) (6), (b) (7)(C) on 07/21/17 that (b) (6), (b) (7)(C) decided to not pursue (b) (6), (b) (7)(C) 16(b) rights. WHI (b) (6), (b) (7)(C) contacted the employer, Mr. Alexander Haas, and requested that he provide the back wage payment that WH had previously negotiated for (b) (6), (b) (7)(C). (b) (6), (b) (7)(C) notified WHI (b) (6), (b) (7)(C) on 09/15/17 that (b) (6), (b) (7)(C) received the back wages on 09/14/17. (b) (6), (b) (7)(C) also stated that the employer, Mr. Haas, convinced (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) had to sign a two page release in order to receive the back wage.

(b) (6), (b) (7)(C)
WHI
(216) 902-5718

Addendum

(b) (7)(E), (b) (6), (b) (7)(C), finally contacted WHI (b) (6), (b) (7)(C) and advised (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) would not be accepting the back wages that were negotiated by WH for the following reasons:

- (b) (6), (b) (7)(E) felt the back wages that were negotiated by WH aren't enough, (b) (6), (b) (7)(C) wants more;
- (b) (6), (b) (7)(E) (b) (7)(E) former employer (b) (6), (b) (7)(C) since he terminated (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) didn't have money to pay (b) (6), (b) (7)(C) bills; and
- (b) (6), (b) (7)(E) stated that since (b) (6), (b) (7)(C), (b) (6), (b) (7)(C) can't buy a house with (b) (6), (b) (7)(C)

In conclusion, (b) (6), (b) (7)(E) stated that (b) (6), (b) (7)(E) will be pursuing matters on (b) (6), (b) (7)(E) own in the courts. A request was made for (b) (6), (b) (7)(E) to provide a statement to WH indicating that (b) (6), (b) (7)(E) was declining WH's resolution and was pursuing this on (b) (6), (b) (7)(E) own. (b) (6), (b) (7)(E) indicated that (b) (6), (b) (7)(E) would think about it and talk to (b) (6), (b) (7)(C) before agreeing to provide such a statement.

The employer was contacted and advised of (b) (6), (b) (7)(C) decision.

(b) (6), (b) (7)(C)
WHI
(216) 902-5718

NARRATIVE

I. COVERAGE:

1This employer is a coffee and tea shop. The roast, brew, package and sell their own brand of coffee. They also sell assorted bakery which they prepare and bake in-house in their kitchen as well as assorted pre-packaged snack items. They have three locations in the Akron/Canton area. The corporate office and roastery is located inside their original location at the following address:

2Muggswigz Coffee & Tea Co.
3Downtown Canton Location
4137 Walnut Avenue NE
5Canton, OH 44702
6Phone: (330) 452-6336 (Store)
7Phone: (330) 754-1407 (HQ and Roastery)

8Their other locations include:

9 Lake Cable Location (location (b) (6), (b) (7)(C) worked at)
105854 Fulton Drive NW
11Canton, OH 44718
12Phone: (330) 754-1017

133452 Manchester Road
14Akron, OH 44319
15Phone: (234) 900-8101
16Opened in February 2017

17The principals are: Alexander J. Haas (President with (b) (4) ownership) and a silent partnership agreement which owns (b) (4) Mr. Haas refused to provide any information regarding the silent partnership. The business was founded and incorporated in Ohio in 2002.

18The annual dollar volume for the enterprise has ranged from (b) (4) to (b) (4) each year for the last 3 calendar years. Employees handle, use and sell a variety of items which have moved in interstate commerce (Coffee beans from Columbia, Ethiopia, Sumatra, and Panama), Straw Propeller Oatmeal from Redmond, Oregon and Pro Bars from Salt Lake City, Utah). Enterprise coverage under Section 3(s)(1)(A) applies to all employees for the entire investigation period. They employ on average (b) (4) individuals throughout the enterprise. They have approximately (b) (4) employees at the main office, (b) (4) employees at the Lake Cable location and (b) (4) employees at their newest location in Akron, Ohio.

19The investigation period for this establishment is from **02/07/2015 to 02/05/2017**. The employer pays all employees monthly on the 10th of each month for the previous calendar month.

203(d) Employer:

21Mr. Andrew Haas is the owner and the 3(d) employer. He oversees operations at all of the locations. He determines and controls the budget, conducts the employee interviews, makes the final determinations on all hirings, promotions, disciplinary actions and terminations.

I. EXEMPTIONS:

113(a)1: The Exempt status of the following salaried employees was **applicable** due to their positions and/or salary level:

2None claimed, reviewed or denied.

3The Exempt status of the following salaried employees was **not applicable** due to their positions and/or salary level:

4None claimed, reviewed or denied.

I. STATUS OF COMPLIANCE:

History: None.

This case is the result of (b) (7)(E) (b) (6), (b) (7)(C) a former Barista, (b) (6), (b) (7)(E) (b) (6) employer failed to provide adequate space for (b) (6) to use to express breast milk as a nursing mother. (b) (6) further (b) (7)(E) (b) (6) employer terminated (b) (6) for unplugging the security camera that was recording the area (b) (6) was provided when expressing breast milk. (b) (7)(E) (b) (6), (b) (7)(C) was notified of the results of the investigation on 05/31/17. (b) (6), (b) (7)(C) was advised of the back wages that the employer agreed to pay. (b) (6), (b) (7)(E) stated that (b) (6) had to discuss this with (b) (6), (b) (7)(C) and would call back the next day (06/01/17) with (b) (6) decision. (b) (6), (b) (7)(E) stated that (b) (6) did not know if (b) (6) wanted to accept the check or exercise (b) (6) private right of action. (b) (6), (b) (7)(C) failed to respond to WH so follow-ups (phone calls, VMSs and emails) were made to (b) (6) on 06/07/17, 06/09/17 and 06/12/17 but (b) (6) still has not responded to WH.

(b) (6), (b) (7)(C) was an hourly employee who was not exempt from section 7 of the FLSA, therefore, (b) (6) was an eligible employee.

Violations:

Section 6: Minimum Wage:

No violations noted.

Section 7: Break Time for Nursing Mothers

Employers are required to provide “reasonable break time for an employee to express breast milk for ^{(b) (6),} nursing child for 1 year after the child's birth each time such employee has need to express the milk.” Employers are also required to provide “a place, other than a bathroom that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk.”

^{(b) (6), (b) (7)(C)}, who gave birth to ^{(b) (6), (b) (7)(C)}, is allowed up to one year after the child's birth as a nursing mother to have reasonable time to express breast milk.

The employer allowed ^{(b) (6), (b) (7)(C)} reasonable time to express breast milk, but violations resulted from the employer's failure to provide a suitable location for ^{(b) (6), (b) (7)(C)} to express breast milk.

^{(b) (6), (b) (7)(C)} discussed with ^{(b) (6),} Shopkeeper (manager) ^{(b) (6), (b) (7)(C)}, the arrangements for pumping. ^{(b) (6), (b) (7)(C)} and ^{(b) (6), (b) (7)(C)} discussed the following spaces at their store:

- Bathroom;
- Shopkeeper Closet and
- Utility Closet.

Although the interviews confirmed that the employer wanted ^{(b) (6), (b) (7)(C)} to use the bathroom at the store, ^{(b) (6), (b) (7)(C)} ^{(b) (7)(E)} advised ^{(b) (6), (b) (7)(C)} that bathrooms were not acceptable per the regulations and provided ^{(b) (6),} a copy of US DOL Fact Sheet #73.

The **drawbacks** to using the **Shopkeeper's closet** were:

- It did not have an outlet for plugging in ^{(b) (6), (b) (7)(C)} pump, but the space could have been made functional if ^{(b) (6), (b) (7)(C)} ran an extension cord across the back of the kitchen floor (under the floor mat) each time ^{(b) (6),} needed to pump;
- It smelled bad, and
- It was always locked due to the contents. Normally, only the shopkeeper had a key for it.

The **advantages** of using the **Shopkeeper's closet** were:

- The door actually closed and locked so it offered privacy and would have been free from intrusion by ^{(b) (6),} coworkers and the public.

The **concerns** with the **utility closet** were:

- The door did not close completely so it was not free from intrusion by others. In addition, since it did not close completely, it did not shield ^{(b) (6), (b) (7)(C)} from view of others;

- There was a working security camera which was mounted high above the door and faced into the room which prevented (b) (6), (b) (7)(C) from having privacy;
- Due to the limited space, there wasn't enough room to bring a chair into the room to pump. As a result, (b) (6), (b) (7)(C) brought in a bucket, turned it upside down and sat on it while pumping.

The **advantages** of the **utility closet** were:

- There was an electrical outlet available on the power strip in the room that (b) (6), (b) (7)(C) could plug (b) (6), pump into.
- The shopkeeper did not have to provide (b) (6), (b) (7)(C) a key to the room. The Shopkeeper believed that providing a key could be a problem with the owner.

In order for either of the above rooms to comply with the regulations, the employer or his representative should have provided (b) (6), (b) (7)(C) with the following:

For the **Shopkeeper's closet**:

- The key to the room since it was always locked and
- An extension cord to plug the pump into and then run into the kitchen since there was no outlet in the closet.

For the **utility closet**:

- Move items so that the door would close completely;
- Fix the door so that it would close;
- Provide a screen or curtain on a rod (such as a tension rod) that could be easily be put up and removed to shield (b) (6), and give (b) (6), privacy from the security camera.

Although the employer had less than 50 employees between all three locations, for them to comply with these provisions **would not** have imposed an undue hardship. After reviewing the level of difficulty or the expense of compliance for the employer in comparison to the size, financial resources, nature and structure of the employer's business, it was determined that compliance was not an undue hardship.

The employer failed to comply with the regulations. (b) (6), (b) (7)(C) was instructed by the employer's representative (Shopkeeper (b) (6), (b) (7)(C)) to unplug the security camera in the utility closet whenever (b) (6), needed to pump and to plug it back in when (b) (6), was done pumping. There were some isolated incidents whereby (b) (6), (b) (7)(C) forgot to plug the security camera back in or the security camera failed to re-connect to the system after being plugged back in. Instead of providing (b) (6), (b) (7)(C) with adequate space per the regulations, the employer removed the employee from the schedule and then terminated (b) (6), (b) (7)(C).

In addition, the employer had a policy whereby all employees had to clock out for all breaks (except quick bathroom breaks) regardless of the amount of time. The employer did not add these breaks back in. A review of some randomly selected time and pay records for (b) (6), (b) (7)(C) did not reveal any minimum wage or overtime violations resulting from

the above practice. The employer was cautioned on this practice at the pre-Final Conference.

As a result of the employer terminating (b) (6), (b) (7)(C), calculations for the reconstructed back wages based on (b) (6), (b) (7)(C) normal work week and regular rate were done to determine the back wages due to (b) (6), (b) (7)(C) (\$813.81). The back wages computations were prepared by Wage Hour using the employer's time and pay records to reconstruct what (b) (6), (b) (7)(C) would typically have worked had (b) (6), (b) (7)(C) employment with Muggswigz continued. The calculations end with the work week ending on 02/05/17. (b) (6), (b) (7)(C) started (b) (6), (b) (7)(C) new job with another employer on 02/06/17. The employer, however, was only willing to pay \$406.91 in back wages.

Section 11: Record Keeping:

Violations resulted from the employer's failure to maintain all the required documents. The employer failed to provide two years of time and pay records for (b) (6), (b) (7)(C). He only provided records for one year. He did not provide a reason for this.

Section 12: Child Labor:

The employer did not employ any minors under the age of 18 during the investigation period.

FMLA:

The employer did not employ 50 or more employees for 20 or more calendar weeks in the current year or in the preceding year. Hence, the employer was exempt from FMLA.

I. DISPOSITION:

Prior to the start of the investigation, WHI (b) (6), (b) (7)(C) received and reviewed a series of text messages between (b) (6), (b) (7)(C) and the Shopkeeper regarding issues with the space that being used by (b) (6), (b) (7)(C) as well as the unplugging of the security camera. The text messages indicated that the Shopkeeper had not been forthright with the owner regarding the arrangements with (b) (6), (b) (7)(C) for expressing.

WHI (b) (6), (b) (7)(C) met with (b) (6), (b) (7)(C) to interview (b) (6), (b) (7)(C) and obtain (b) (7)(E) for the investigation. (b) (6), (b) (7)(C) also provided WHI (b) (6), (b) (7)(C) with a copy of the termination letter that (b) (6), (b) (7)(C) employer mailed to (b) (6), (b) (7)(C) with (b) (6), (b) (7)(C) final pay check.

The initial conference was held on 02/06/17 at the main office with the employer/owner Alexander Haas and WHI (b) (6), (b) (7)(C). After the initial conference, WHI (b) (6), (b) (7)(C) toured the establishment and then waited for the employer to provide some of the required records. The employer stated that he thought the letter and email that he received from the US DOL were a hoax so he did not gather any of the required information prior to the initial conference meeting. (The employer did

not have a fax number.) The employer was not able to provide most of the required information due to his not maintaining it and/or him not knowing how to access it.

A meeting was scheduled with Mr. Haas and WHI (b) (6), (b) (7)(C) for 02/09/17 at the Lake Cable location since that was the site that (b) (6), (b) (7)(C) had worked at. Mr. Haas was advised by WHI (b) (6), (b) (7)(C) that an in-person investigation of that location along with an interview with the Shopkeeper (Manager (b) (6), (b) (7)(C)) for that location was necessary. When WHI (b) (6), (b) (7)(C) visited the Lake Cable location, the employer was there but the Shopkeeper was not there. Mr. Haas alleged that he did not know that (b) (6), (b) (7)(C) presence was necessary. At WHI (b) (6), (b) (7)(C) request, he called the Shopkeeper from his cell phone and left a VMS for (b) (6), (b) (7)(C) did not return the call while WHI (b) (6), (b) (7)(C) toured and waited at the establishment. Questions regarding the arrangements and conversations between (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) were asked of Mr. Haas, but he indicated that he was not involved in those conversations, that he did not know that (b) (6), (b) (7)(C) was a nursing mother and that he did not know what they had discussed between themselves. He also stated that he only stopped by that location approximately once per week with his visit typically being in the morning. (b) (6), (b) (7)(C) worked afternoons so he stated that he normally did not see (b) (6), (b) (7)(C) at work.

Mr. Haas showed WHI (b) (6), (b) (7)(C) two rooms at the back of the kitchen that he thought would have been available for (b) (6), (b) (7)(C) to use to express breast milk. He simply referred to the rooms as the “staff closet” and the “staff room”. Their doors were opposite each other. The two rooms were separated by the back exit door. Mr. Haas stated that he did not know which room, if any, that (b) (6), (b) (7)(C) had used. At one point, he stated that he thought that she had pumped from within (b) (6), (b) (7)(C) car on (b) (6), (b) (7)(C) breaks.

The “staff closet” (aka: “utility closet”) was a very narrow room that contained a locked supply cabinet, store supplies, the security video monitor, a security camera and store equipment such as the hot water tank. There were no open outlets for (b) (6), (b) (7)(C) to plug (b) (6), (b) (7)(C) pumping unit into, but Mr. Haas stated that (b) (6), (b) (7)(C) could have used an open outlet on the power strip that was on a shelf located high on the wall. He also stated that they had provided a black sheet for (b) (6), (b) (7)(C) to hang to shield (b) (6), (b) (7)(C) from the security camera. He reached out and pulled a piece of folded black fabric from behind the locked cabinet. When asked how (b) (6), (b) (7)(C) would have hung the sheet and secured it, he did not know. There were no tension bars, hooks, nails, curtain rods, etc. in the room for (b) (6), (b) (7)(C) to use. He stated that he guessed that (b) (6), (b) (7)(C) had to find a way to tie the corner of the fabric to the shelf on the wall and somehow secure the other end of the fabric to the other wall. The security and privacy of the room was compromised since it the door could not be completely closed. Mr. Haas said that (b) (6), (b) (7)(C) could have made a sign to hang on the door when (b) (6), (b) (7)(C) was using the room to let others know that it was in use. He did not, however, know if (b) (6), (b) (7)(C) actually did that or not.

The other room (“Staff Room” as he referred to it; aka: “Shopkeeper's Closet”) was a very small room with a drain on the floor. There were no electrical outlets in this room for (b) (6), (b) (7)(C) to plug (b) (6), (b) (7)(C) electric pump into. The closest electrical outlet was approximately 7-8 feet away on the opposite wall in the kitchen. Mr. Haas said that (b) (6), (b) (7)(C) could have run an extension cord from the “staff room” out the door, under the mat, secured it with duct tape and then plugged into it when (b) (6), (b) (7)(C) needed to use it. The door for the “staff room” did close completely and there were no cameras in this room, however, only the Shopkeeper normally had a key for this room. This room was kept locked at all times due to the key for the safe

being inside of it as well as expensive supplies for the store. The Shopkeeper and (b) (6), (b) (7)(C) normally did not work the same days and shifts so without the employer making a copy of the key, it would have been difficult to access this room as needed for pumping.

A pre-Final Conference was held with the employer at the main office on 02/22/17. Present for the meeting were the employer (Mr. Alexander Haas) and WHI (b) (6), (b) (7)(C). The employer was advised on the findings to date for the violations for the Nursing Mother provisions as well as for the deductions made for all breaks. Mr. Haas would not answer most of the questions that were asked of him. He typically responded that he did not know the answer or he stated that he would not answer until after he consulted an attorney. By the end of the meeting, Mr. Haas did say that he would change his policy for breaks if it was violating the FLSA. He was also provided the WH-56 for the reconstructed back wages for (b) (6), (b) (7)(C). He stated that he had to discuss the back wages with his accountant (his brother) before he could agree to them. Mr. Haas also stated that he felt that he was a small business and that the only way for him to ensure compliance with the Nursing Mother Regulations was for him to hire someone to police the store and monitor which room (b) (6), (b) (7)(C) was using on a daily basis.

Interviews were done with the current and former employees from the Lake Cable location. The interviews indicated the following:

- The door to the “staff closet / utility closet” did not close or lock.
- The black piece of fabric was placed there after (b) (6), (b) (7)(C) was terminated.
- The only way for (b) (6), (b) (7)(C) to have privacy was to unplug the camera in the “staff closet / utility closet” or be given the key to the “staff room”.
- A key was never given or offered to (b) (6), (b) (7)(C) for access to the “staff room / shopkeeper's closet” by the Shopkeeper.

The Final Conference was held on 05/26/17 at the main office. Present for the meeting were Mr. Alexander Haas (employer) and WHI (b) (6), (b) (7)(C). The findings of the investigation were discussed with Mr. Haas. The violations, back wages and compliance were discussed in detail. Mr. Haas disagreed with the findings of the investigation. He insisted that he followed the law but he had no proof for it. He stated that he believed that (b) (6), (b) (7)(C) should have known or thought of other options for using the room once (b) (6) was told to not unplug the security camera. He said that (b) (6) should have thought to put tape over the camera lens, cover the camera with a cloth, purchase a tension rod to hang a sheet, opened the door to the cabinet to block the view of the camera, requested the key to the other room each time (b) (6) needed to express breast milk, etc. He did not believe that the room provided was inadequate. He also insisted that it was (b) (7)(E) who refused to accept a key to the locked closet but he did not have anything to support this. The employee interviews did not support his statements.

Mr. Haas would not consider payment of the back wages without a release from the DOL stating that (b) (7)(E) could not pursue back wages from him again. This was a limited investigation so a WH-58 (Receipt form) would not be used. ADD Woodruff found a statement from ELAWS and provided it to WHI (b) (6), (b) (7)(C) to give to the employer. Mr. Haas was willing to accept this but he stated that he still was going to ask (b) (6), (b) (7)(C) to sign a release when he provided (b) (6) with

the check. He was reminded that he could not demand that (b) (6), sign such a release and that he could not make (b) (6), signing a release conditional on him providing (b) (6), the check.

WHI (b) (6), (b) (7)(C) contacted (b) (6), (b) (7)(C) on 05/31/17 and informed (b) (6), that (b) (6), former employer had agreed to pay a reduced amount for the back wages (\$406.91 instead of \$ 813.81). (b) (6), (b) (7)(C) stated that (b) (6), needed time to think about this and time to discuss it with (b) (6), (b) (7)(C) before deciding to accept the check or pursue (b) (6), own private right of action. (b) (6), stated that (b) (6), would call WHI (b) (6), (b) (7)(C) by 06/01/17 and provide (b) (6), with a response. When (b) (6), (b) (7)(C) failed to respond to WHI (b) (6), (b) (7)(C) follow-ups were done to her on 06/07/17, 06/09/17 and 06/12/17 but (b) (6), did not respond. The employer was advised of (b) (6), failure to respond to WH on 06/12/17 and 06/16/17. Since it was decided at the Final Conference that the employer would contact (b) (6), (b) (7)(C) directly to provide (b) (6), with the back wages, he was instructed on 06/16/17 to contact (b) (6), (b) (7)(C) and make arrangements provide (b) (6), with the back wage check. He was also reminded to document his efforts to contact (b) (6), and any response from (b) (6),. Payment of the back wages must happen by 06/25/17, per the signed WH-56. The employer was advised that preliminary proof of payment of the back wages had to be provided to WH by 07/01/17. Final proof of payment was due in to Wage Hour by 07/24/17.

The employer stated that he updated his policies regarding breaks and meal periods. Employees would now be paid for breaks, but would not be paid for meal periods (30 minutes or more). He stated that this policy was put into effect immediately after the pre-Final Conference.

I recommend closing this file after receipt of proof of payment of the back wages has been received by WH from the employer. In the event that (b) (6), (b) (7)(C) refuses the back wages, I recommend that (b) (6), be advised (again) of (b) (6), private right of action (16(b) rights).

Pubs provided: HRG (previously), 516, 785, FLSA, and Fact sheet #73 (previously).

(b) (6), (b) (7)(C)

WHI

06/16/17

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1813195 Originating District: Kansas City KS District Office
Local Filing Number: 2017-221-15927 Investigating District: Kansas City KS District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 02/02/2017
Assignment Date: 02/02/2017

Employer Information

Trade Name: Ford Motor Company
Address: 8121 U.S. 69 Highway

Kansas City, MO 64119

Legal Name: Ford Motor Company
EIN: 38-0549190
County: Clay
NAICS Code: 336111
No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 10/03/2016 BNPI:
To: 04/25/2017 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Compliance (no violations found) Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

15.5hrs. 3s1a coverage. Inv limited to sec 7r nursing mothers. No violations found. ER ATFC. Recommend admin closing file with no further action. HRG, FS 44, FS 77a, FS 43, FS 28d, FS 73, NM EE Rights Cards.

WHI Signature: _____ Date: 04/28/2017

Reviewed By: _____ Date: _____

FLSA Nursing Mothers Narrative

Ford Motor Company
8121 U.S Highway 69
Claycomo, MO 64119
FEIN: 38-0549190
DUNS: NA

Case assignment: This case was assigned as a result of (b) (7)(E)

Coverage

Subject firm is a world-wide automotive manufacturer. There are over (b) (4) employees at this location. The firm's main office is located at 211 West Fort St, Detroit, MI 48226. Wes Edwards, Senior Labor Rep is considered the 3(d) employer at the Claycomo plant.

The firm was represented by Timothy Millman, Berkowitz Oliver LLP, 2600 Grand Boulevard, Suite 1200, Kansas City, MO 64108. Telephone number: 816-561-7007.

According to the firm's annual report, the firm has an annual dollar volume of over \$140 billion. See Exhibit C-1.

Section 3(s)(1)(A) coverage was applicable for the investigation period. The enterprise met the ADV requirement and has several thousand employees that handle goods that move interstate.

The period of investigation was 10/03/2016 to 04/25/2017 and was limited to (b) (6), (b) (7)(C)

Pay periods are weekly. No payroll or time records were requested as this complaint was limited to the Nursing Mothers' provisions of the Act.

Contingent workers: None.

Federal contracts within the last three years: None DUNS: N/A Cage: N/A

MODO: Detroit, MI District Office. (b) (7)(E) Exhibit D-1.

16(b): The ER indicated he was not aware of any pending 16(b) actions.

Exemptions

None considered. The investigation was limited to (b) (6), (b) (7)(C) who is a non-exempt hourly paid employee.
(b) (6), (b) (7)(C)

Status of Compliance

Extensive history exists for this ER.

(b) (6), (b) (7)(C) Information: (b) (7)(E) (b) (6), (b) (7)(C) (b) (7)(E) for a period of time (b) (6), (b) (7)(C) was only allowed three nursing breaks. (b) (6), (b) (7)(E) (b) (6), (b) (7)(C) was told she would have to submit medical documentation for additional breaks. (b) (6), (b) (7)(E) also (b) (7)(E) the room used for nursing breaks was not private. Although (b) (6), (b) (7)(C) was paid for break times, (b) (6), (b) (7)(C) chief (b) (7)(E) was regarding the company's plan to stop paying for nursing breaks. (b) (7)(E). See Exhibit B-1 and (b) (7)(E)

Section 206: Not determined. The investigation was limited to enforcement under the Break Time for Nursing Mothers of Section 207(r) of the FLSA.

Section 207: Not determined. The investigation was limited to enforcement under the Break Time for Nursing Mothers of Section 207(r) of the FLSA.

Section 207(r)(1)(A)- Time of Break: No violations found. (b) (6), (b) (7)(C) initially (b) (7)(E) (b) (6), (b) (7)(C) was only allowed to pump three times per day which was usually during (b) (6), (b) (7)(C) designated rest and lunch periods. When interviewed, (b) (6), (b) (7)(C) stated (b) (6), (b) (7)(C) was allowed additional time to pump however was advised that the time would be unpaid. Regarding (b) (6), (b) (7)(C) (b) (7)(E) that the firm required documentation, (b) (6), (b) (7)(C) stated that upon (b) (6), (b) (7)(C) return (b) (6), (b) (7)(C) brought a note from (b) (6), (b) (7)(C) medical provider and was told the note was not needed. The firm's corporate policy states that approval is not needed however employees should notify their supervisor of their plans. On 02/07/2017, the plant's Senior Labor Rep, Wes Edward, sent a plant-wide email indicating all nursing break requests will be accommodated but employees must work with their process coach to establish a schedule. When WHI (b) (6), (b) (7)(C) questioned if the employer ever required medical documentation, the ER stated they considered requesting medical documentation. The purpose of the note was not to determine necessity for additional breaks but rather to identify nursing mothers so the medical department and supervisors would know they are entitled to additional breaks. The ER stated that due to the push back they received this was never put in place. See Exhibits D-2 and D-3.

Section 207(r)(1)(B) – Place of Break: No violations found. (b) (6), (b) (7)(C) provided pictures of the areas designated for nursing breaks. The pictured showed a room with an area that was shielded with a curtain. The WHI visited the

plant to tour the area. The firm has two rooms in the main plant area designated for nursing breaks. A “lactation area” plaque is displayed on each door. The first room had 5 stations. Each station was equipped with a chair, table and electrical outlet. Each station had a partition to provide privacy. A sign was posted on the wall requesting that employees leave the partition open when the station was unoccupied. There was another door on an adjacent wall which led into the women's restroom. The second room had a similar setup but with only one station. Additionally, the medical department had three private rooms with locks that could be used for nursing breaks. The ER stated there was another medical department located on the other side of the plant that had a similar setup and could also be used.

Section 207(r)(2) – Compensation of Break Time: No violations found. (b) (6), (b) (7)(F) stated (b) (6), (b) (7)(F) was paid for (b) (6), (b) (7)(F) normal rest breaks. The plant policy changed effective 02/13/2017. Employees were advised that normal breaks would be paid but any additional break time would be unpaid. The ER stated nursing breaks will be “G” coded. This indicates the break will go toward compensable hours for OT purposes, but the break itself will be unpaid. See Exhibits D-2 and D-3.

Section 207(r)(3) – Undue Hardship: None considered as the firm employs more than 50 employees and the firm did not claim any hardships.

Section 211: Not determined. The investigation was limited to enforcement under the Break Time for Nursing Mothers of Section 207(r) of the FLSA.

Section 212: (b) (6), (b) (7)(C) stated (b) (6), (b) (7)(C) was not aware of any employees under 18 years of age. See Exhibit B-1.

Disposition

WHI (b) (6), (b) (7)(C) held a final conference at the establishment on 04/25/2017. In attendance were Timothy Millman (Outside Counsel), Wes Edwards (Senior Labor Rep), and Dr. Carla Cooch. The provisions of the Break Time for Nursing Mothers were discussed.

Specifically discussed was the requirement to provide a reasonable amount for break time. The ER was advised that each situation is different and they should consider factors including age of child, travel time within the plant, clean-up and storage. Regarding the location of break, WHI (b) (6), (b) (7)(C) informed the ER the stations met the minimum requirements. Although partitions were provided for privacy, it was suggested to provide signs that could be placed on the outside of the partition indicating the station was in use. The lactation area was located in the plant's main building. The ER stated it would take about 6 minutes to walk (each way) from the furthest end of the building. WHI (b) (6), (b) (7)(C) asked if there are any other areas that could be utilized. The employer stated that given the industrial nature of the plant, the current area is the only location that can be

designated. They also stated that the medical departments could be used as well as long as they are not occupied.

The employer was advised no violations were found. The ER agreed to maintain future compliance with the Act.

WHI (b) (6), (b) (7)(C) provided FS 73 and a stack of Break Time for Nursing Mothers Employee Rights Card.

The ER was also provided Fact Sheet 43 discussing Child Labor as well as Fact 28d regarding FMLA Notification Requirements.

Pubs provided: HRG, FS 44, FS 77a, FS 43, FS 28d, FS 73, NM EE Rights Cards.

(b) (6), (b) (7)(C) Notification: (b) (6), (b) (7)(C) was contacted by telephone on 04/27/2017 and advised of the findings.

Recommendations

1. Recommend administratively closing this file with no further action.

2. Correspondence should be sent to:

Wes Edwards, Senior Labor Rep
Ford Motor Company
8121 U.S Highway 69
Claycomo, MO 64119

CC: Timothy Millman, Attorney
Berkowitz Oliver LLP
2600 Grand Boulevard, Suite 1200
Kansas City, MO 64108

(b) (6), (b) (7)(C), Wage and Hour Investigator

04/27/2017

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1815848 Originating District: Grand Rapids MI District Office
Local Filing Number: 2017-191-00671 Investigating District: Grand Rapids MI District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 03/03/2017
Assignment Date: 03/03/2017

Employer Information

Trade Name: Fifth Third Bank Legal Name: Fifth Third Bank
Address: 403 Butternut Dr EIN: 31-0676865
Holland, MI 49424 County: Ottawa
NAICS Code: 522110
No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 02/01/2016 BNPI: 1264
To: 03/06/2017 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☒
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	2	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

FLSA NM- Limited Review of 5/3 Bank Branch after allegation was received of employee being forced to use bathroom to express milk. Violation (b) (7)(E) and impacted two employees total. A FC was held on 03/13/2017 with Trevor Gilette at 5/3 headquarters on 03/13/17 who agrees to comply. Firm remedied violation immediately. (b) (7)(E) has been notified. Pubs given: FLSA HRG, FS44, FS28D, FS73, FS77A, FLSA Poster, FMLA Poster

WHI Signature: _____ Date: 03/13/2017

Reviewed By: _____ Date: _____

Fifth Third Bank Case ID: 1815848

Case ID: 1815848
Local File No: 2017-191-00671
Employer Name: Fifth Third Bank- Butternut Drive, Holland, MI Branch
Legal Name: Fifth Third Bank Corp
Address: 403 Butternut Drive, Holland, MI 49424
Corporate Address: 38 Fountain Square Plaza, MD 10909F, Cincinnati, OH 45263
Contact Information: Trevor Gillette, Legal Counsel, Vice President, (513) 534-6970
FEIN: 31-0676865

FLSA Nursing Mothers Narrative Report

Case Assignment Information

Case was assigned as (b) (7)(E) review of a Fifth Third Bank branch in Holland, MI after (b) (6), (b) (7)(C) (b) (7)(E) was not given a reasonable space to express milk. (b) (6), (b) (7)(C) (b) (7)(E) the only private space available was the women's bathroom, in violation of the FLSA Nursing Mother's provisions. (b) (7)(E) and the violation was cited for two employees. The employer agreed to comply and immediately came into compliance by turning an unused conference room into a private space by adding blinds to a window and adding a lock. (b) (6), (b) (7)(C) provided written (b) (7)(E) and has been notified of the result of the case. The employer agrees to comply going forward and is taking proactive measures to ensure regional compliance.

Type of Investigation: Limited Investigation of firm under the Break Time for Nursing Mother's provisions of the FLSA

Period of Investigation: 02/01/2016-03/08/2017

Coverage

The firm is covered by the provisions of the Fair Labor Standards Act. Fifth Third bank is a large regional bank with 1,265 banking centers and employing (b) (4) individuals. Employees of the firm are covered on an enterprise basis under the Act as they are all regularly engaged in interstate commerce in utilizing a database system that transacts data to the headquarters in Cincinnati, OH. According to the firm's annual report, the firm had a profit of \$128,000,000 in 2015, far exceeding the ADV requirement of the Act [See Exhibit C-0, C-1].

The firm is run by a board of Directors consisting of the following individuals: Greg D Carmichael (CEO and President), Lars C Anderson (EVP and COO), Chad M Borton (EVP), Frank R. Forrest (EVP and Chief Risk Officer), Mark D. Hazel (Senior VP and Controller), Heather Russell Koenig (EVP, Chief Legal Officer and Corporate Secretary), Randolph J. Koporc (EVP), Gregory L. Kosch (EVP), James C. Leonard (EVP and Treasurer), Philip R. McHugh (EVP), Joseph R Robinson (EVP and Chief Informations Officers, and Director of Information Technology), Timothy N. Spence (EVP and Chief Strategy Officer), Teresa J. Tanner (EVP and Chief Administration Officer), and Tayfun Tuzun (EVP and Chief Financial Officer).

The firm is run locally by a regional administration office in Grand Rapids who enacts policies regarding the provisions of Break Time for Nursing Mothers. Arlene Nelson-Donders is the Labor Relations specialist based in Grand Rapids who would be responsible for any facility changes to be made due to Break time for Nursing Mothers. At the branch level, Adam Cushman is the branch manager and was the individual notified of both employees' need for break time and space to express milk [See Exhibit C-0, C-1].

MOD0: (b) (6), (b) (7)(C)
MOD0 Trade Name: Fifth/Third Bank
MOD0 Manager: DD John Dudash
MOD0 Instructions: (b) (7)(E)

Exemptions

213(a)(1)

A 213(a)(1) Administrative Exemption was not claimed and does not apply to the two affected employees. (b) (6), (b) (7)(C) has been employed (b) (6), (b) (7)(C) as a personal banker. (b) (6), (b) (7)(C) is compensated on an hourly basis. (b) (6), (b) (7)(C) has been employed by the firm as a teller since (b) (6), (b) (7)(C) is compensated on an hourly basis of (b) (6), (b) (7)(C) /hr. The 213(a)(1) administrative exemption does not apply to either employee [See exhibit B-1, B-2].

Status of Compliance

Section 207(r)

Section 207(r)(1)(A) Insufficient Break Time- No Violation Alleged, No Violation Substantiated

(b) (6), (b) (7)(C) reported in employee interviews with WHI that they were given sufficient

break times to express milk as needed and that they were told specifically that they were able to express milk whenever was needed. No violation of Section 207(r)(1)(A) was cited [See exhibit B-1, B-2].

Section 207(r)(1)(B) Insufficient Space- Violation Alleged, Violation Substantiated

Interviews with (b) (6), (b) (7)(C) revealed that employees were not provided with an adequate space to express milk. (b) (6), (b) (7)(C) reported that prior to (b) (6), (b) (7)(C) was employed at a Downtown Holland branch where (b) (6), (b) (7)(C) was given a private office to express milk. (b) (6), (b) (7)(C) was transferred to the Butternut location in (b) (6), (b) (7)(C) and had been subjected to using a single stall women's bathroom since. (b) (6), (b) (7)(C) reported that a deposit room was also provided as an option but that it was frequently used by customers and did not have a lock, which would not meet the requirements of the Act. (b) (6), (b) (7)(C) reported that (b) (6), (b) (7)(C) was also forced to use the same restroom when (b) (6), (b) (7)(C) was expressing milk from (b) (6), (b) (7)(C). The violation was also (b) (7)(E) through employer admission by branch manager Adam Cushman during the Initial Conference. The firm immediately agreed to come into compliance by making an unused conference room the new break room for nursing mothers by adding blinds and a lock to the door. Inspection of the conference room was done to confirm that it was in compliance [See exhibit B-1, B-2 for EEIN, C-0 for IC notes, D-5 for photos of space].

Section 215(a)(3) Retaliation- No Violation (b) (7)(E)

(b) (7)(E)

Disposition

A final conference was held telephonically with Vice President and Legal Counsel Trevor Gillette on 03/13/2017. The violations being cited were repeated to Mr. Gillette. Mr. Gillette reported that as a result of the investigation that the entire region was updating its Nursing Mother's facilities to ensure that each branch had a private space designated. A regional training has been held with all of the financial center managers in the Holland area (15 branches) where the managers were updated and reminded of the provisions of Break Time for Nursing Mothers. Fifth Third Bank is also considering holding a similar training beyond the region. Anti-retaliation provisions in regards to the break time provisions were also discussed with him even though violations were not cited in the case. Gillette agreed to comply going forward and will contact WHI (b) (6), (b) (7)(C) if any questions arise.

WHI (b) (6), (b) (7)(C) spoke with (b) (6), (b) (7)(C) on 03/06/2017 who reported that the conference room had been

Fifth Third Bank Case ID: 1815848

opened for [REDACTED] use. [REDACTED] was satisfied with the outcome of the investigation.

Publications Given: HRG, FS44, FS28D, FS73, FS77A, FMLA, FMLA Poster, FLSA Poster

Recommendation: Close Case administratively (b) (7)(E)

Employer Contact Information: Trevor Gilette, Legal Counsel, Vice President, (513) 534-6970, 38 Fountain Square Plaza, MD 10909F, Cincinnati, OH 45263

WHI [REDACTED]

03/13/2017

Grand Rapids District Office

WHISARD Compliance Action Report

U.S. Department of Labor Wage and Hour Division

Case ID: 1816210 Originating District: Minneapolis MN District Office
Local Filing Number: 2017-250-09703 Investigating District: Minneapolis MN District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 03/07/2017
Assignment Date: 03/14/2017

Employer Information

Trade Name: Willow Ridge Healthcare
Address: 400 Deronda St

Amery, WI54001

Legal Name: Real Properties Health Facilities, LLC
EIN: 88-0463477
County: Polk
NAICS Code: 623110
No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 03/06/2017 To: 03/17/2017
Investigation Type: (b) (7)(E)
Investigation Tool: Limited Investigation
Compliance Status: Agree to Comply

BNPI:
Reinvestigation: ☐
Recurring Violation: ☐
Future Compliance Agreed: ☒
Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

CT = 19 hrs. (b) (7)(E), limited investigation, FLSA 207(r) nursing mother provision. 3s1b-covd ER. Viols: ER failed to provide reasonable break time. FC with Administrator Nicole Verndon, at EST, 3/17/17. ER ATC/ATRemedy. Recmd admin close w/NFA. (b) (6). (b) (7)(C) contacted with final status on 3/17/17. Pubs: HRG,FLSA, FLSA 207(r), WHD FAQs, FS73, 44, 28D, FMLA, Regs 516, 541, 785, 778, CL101, FAB 2011-3, Attch A, FLSA-FMLA posters.

WHI Signature: _____ Date: 03/21/2017

Reviewed By: _____ Date: _____

FLSNM NARRATIVE REPORT

Willow Ridge Healthcare Facilities, LLC
400 Deronda Street
Amery, WI 54001
715-268-6880

Case ID: 1816210
FEIN: 88-0463477

Main Office:
Real Properties Health Facilities, LLC
600 Las Vegas Blvd. South
Las Vegas, NV 89101-6654

Corporate/Management Information (Exhibit C-5):

Alan S. Bird Residue Trust, (b) (4) ownership (firm did not provide corporate officer information)
Nicole Verdon, Administrator, (b) (4) managerial control
James Deignan, (b) (4) managerial control
Dawn Marsh, (b) (4) managerial control
Patricia Green, (b) (4) managerial control

203(d) Employer:

Ms. Nicole Verdon is the 203(d) employer. Ms. Verdon is present on a daily basis, and; as Administrator, implements and assures compliance with all local and corporate policies. Ms. Verdon set the local policy and location for break time for employees who are nursing mothers (Exhibits B-2, C-6, D-3, D-4)).

COVERAGE

The subject firm is a licensed nursing home in the State of Wisconsin; coverage under Section 203(s)(1)(b) is applicable. The firm also is covered under Section 203(s)(1)(a) of the Act. Gross receipts (ADV) for the last three years was approximately (b) (4) in 2014, (b) (4) in 2015, and (b) (4) in 2016. All nursing and kitchen staff regularly handle the following goods, that have been shipped in interstate commerce, on a daily basis: Preferred Kleenex, Atlanta, GA, Job Select vinyl gloves,

Elk Grove Village, IL, and McKesson masks, Richmond, VA (Exhibits C-3, C-6).

Protection Applicability – FLSA Section 207(r):

The nursing home employs (b) (4) employees currently, with the total enterprise employees = (b) (4) (more than 50 employees – firm cannot claim undue hardship) (Exhibits C-4, C-6).

(b) (6), (b) (7)(C) (less than one year old during the period of investigation) (Exhibit B-1).

(b) (6), (b) (7)(C) worked in a non-exempt position (subject to Section 207) at the nursing home (Exhibit B-1, C-4n).

MODO: The Las Vegas, Nevada DO is the MODO; (b) (7)(E) (Exhibit D-1).

Investigative Period: March 6, 2017 – March 17, 2017

EXEMPTIONS

Section 207(r): (b) (6), (b) (7)(C), paid on an hourly basis, worked as a certified nurse assistant, and was properly classified as non-exempt. (b) (6), (b) (7)(C) was subject to the provisions of Section 7, and thus entitled to protection under Section 7(r) (Exhibits B-1, C-4n).

STATUS OF COMPLIANCE

Prior History: No history noted.

Reason for Investigation: This case was assigned as a limited investigation under FLSA Section 207(r), nursing mother's provision of the FLSA. No issues were disclosed during the initial conference to warrant expansion to a full investigation under FLSA (see case disposition).

(b) (7)(E) (Exhibit B-1a).

Section 207(r)

Break Time – 207(r)(1)(A): Violation disclosed. The Administrator stated in an interview statement that they communicated to (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) could only take breaks for expressing breast milk at Midnight and at 3 a.m. They allowed 30 minutes for each break, paid, as (b) (6), (b) (7)(C) could work on charting (and was working) during that time. The Administrator also provided a copy of the firm's nursing mother's policy that they gave to (b) (6), (b) (7)(C), which stated exact times that the two breaks could be taken. Additionally, the Administrator provided copies of text messages between she and (b) (6), (b) (7)(C), further communicating these policies (Exhibits B-1, B-2, D-3, D-4).

Space – 207(r)(1)(B): No violation disclosed. (b) (6), (b) (7)(C) stated that the firm has provided a reasonable space for (b) (6), (b) (7)(C) to express breast milk currently. (b) (6), (b) (7)(C) uses the nursing supervisor's office (vacant on night shift), and can close the curtains and lock both doors. A tour of establishment noted that the room had a large table, ample electrical outlets, and several chairs. The room served a functional space for (b) (6), (b) (7)(C), and was shielded from view and free from intrusion. At the time of (b) (7)(E) (b) (6), (b) (7)(C) had agreed with the employer to utilize the copy room for expressing breast milk. This room also had locks on the doors and was free from intrusion and shielded from view, as noted during the establishment tour (Exhibits B-1, B-2, C-6a).

Back Wages/Computations: None required.

DISPOSITION

The final conference was held at the establishment on March 17, 2017. In attendance were WHI (b) (6), (b) (7)(C) and Administrator Nicole Verdon.

The major applicable provisions of the FLSA were discussed. The firm was advised that this investigation was limited to compliance under FLSA Section 207(r), provisions for nursing mothers.

Coverage under the FLSA was discussed with Ms. Verdon; the firm was covered as a named enterprise under 203(s)(1)(b) of the Act.

The factors concerning protections under 207(r) of the Act were discussed:

- The enterprise employed more than 50 employees (no undue hardship could be claimed).
- The child's age was less than 1 year.
- (b) (6), (b) (7)(C) was not exempt under Section 7 of the Act: protection under 207(r) applicable.

Ms. Verdon was advised that the nursing home failed to provide reasonable break time to (b) (6), (b) (7)(C). Ms. Verdon was advised the Statute states that employers are required to provide reasonable break time for an employee to express breast milk for (b) (6), (b) (7)(C) nursing child for 1 year after the child's birth ***“each time such employee has need to express the milk.”*** Ms. Verdon stated that she had printed out a Q&A from another website (not WHD), that intimated that the employer could make an agreement with an employee on when the breaks would be taken, or set the break time to accommodate staffing, etc. Ms. Verdon was advised that the language in the Statute, Fact Sheet #73, and the accompanying WHD Q&A's, is the only language that she should refer to with regard to maintaining and sustaining compliance with the nursing mother provision of the FLSA.

Ms. Verdon stated that she would ensure that (b) (6), (b) (7)(C) take (b) (6), (b) (7)(C) nursing mother breaks whenever (b) (6), (b) (7)(C) feels the need, and stated that (b) (6), (b) (7)(C) would hold a meeting immediately with (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) supervisor, to communicate the change in policy.

Ms. Verdon was further advised on the prohibition for retaliation under Section 215(c), for future reference.

The general compliance principles under the FLSA were also discussed:

Minimum Wage –

Ms. Verdon stated the lowest wage paid currently is (b) (4)/hr. No required uniforms.

Overtime –

Ms. Verdon stated the firm pays semi-monthly, and their time system automatically computes overtime premium due on a 7-day work week period, with the “straddle week” carried over into the next pay period for overtime calculation. Ms. Verdon voluntarily provided a sample to WHI (b) (6), (b) (7)(C) demonstrating this method (Exhibit D-6). Ms. Verdon stated that they have just recently started a sign-on bonus incentive program. Ms. Verdon was provided a copy of Regulation 778, with non-discretionary bonuses and the

regular rate discussed in full for future compliance. Ms. Verdon stated that all salaried exempt staff have management as their primary duty, and supervise more than 2+ full time equivalents. Also, she added that most are professionally exempt under 541.300, and are classified properly.

Recordkeeping –

Ms. Verdon stated the firm maintains all records for a minimum of 7 years, time and payroll.

Child Labor –

Ms. Verdon stated that on occasion they will hire certified nurse assistants who are under 18, but do not have any currently. She said they do not have any compactors or balers, and do have motorized patient hoists. The 2011-3 FAB on patient hoists, along with “Attachment A” was discussed and given to Ms. Verdon for future compliance.

Ms. Verdon agreed to comply with the provisions of Section 207(r) of the FLSA immediately, and agreed to remedy the rules for break time for (b) (6), (b) (7)(C), and any other nursing mothers requiring break time, in the future.

(b) (6), (b) (7)(C) **Notification:** (b) (6), (b) (7)(C), was notified [in person] of the results of the investigation, on March 17, 2017.

Publications Provided: HRG, FLSA, FLSA 207(r), Fact Sheet 73, WHD Q&A, Regs 516, 541, 785, 778, FAB 2011-3, w/”Attachment A”, CL-101, FMLA, FS#28D, FLSA & FMLA Posters.

Recommendation: It is recommended that this case be administratively concluded with no further action.

WHI (b) (6), (b) (7)(C) _____
March 21, 2017

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1819227 Originating District: Columbus OH District Office
Local Filing Number: 2017-163-16456 Investigating District: Columbus OH District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 04/10/2017
Assignment Date: 04/10/2017

Employer Information

Trade Name: L.A. Tan Legal Name: L.A. Tan
Address: 3224 Dayton-Xenia Road EIN: ER Refused
County: Greene
NAICS Code: 81211
Dayton, OH45434 No. Of Employees: (b)

Investigation Information

Period Investigated From: 02/01/2017 BNPI:
To: 06/14/2017 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☐
Compliance Status: Refuse to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

Hrs: 14. 3s1 coverage. FLSNM violation found. ER provided limited information and then failed to respond to repeated emails and phone calls. (b) (7)(E). EE is no longer working for ER. Recommend case be closed.

WHI Signature: _____ Date: 07/07/2017

Reviewed By: _____ Date: _____

Case ID: 1819227

L.A. Tan
3224 Dayton-Xenia Road
Dayton, OH 45434

EIN: refused to disclose

COVERAGE:

The subject firm is a tanning salon owned by a corporation headquartered in Illinois (3775 W. Arthur Ave., Lincolnwood, IL 60712). The president of the corporation is Nick Patel.

The point of contact for this investigation was Tom Otachel. Mr. Otachel stated that he is a partner in the corporation and has a share in each location. There are 16 Dayton area locations. The ADV for this location is approximately (b) (4). Additional corporate and local information was requested of Mr. Otachel during the first phone conversation but he was unable to provide it at that time. He was sent an email and called several times to discuss the additional information but he did not respond.

There are approximately (b) (4) employees in the Dayton area. All employees are covered under 3(s)1 enterprise coverage of the FLSA since it is evident that the 16 locations would have an ADV well over \$500,000.

The investigative period was from February 2017 to May 2017.

MODO: Chicago is the MODO office. Instructions: (b) (7)(E)

EXEMPTIONS

None applicable.

STATUS OF COMPLIANCE: LIMITED INVESTIGATION

This investigation is limited to FLSA Nursing Mothers. This investigation was initiated as a result of (b) (7)(E). (b) (6), (b) (7)(C), (b) (7)(E) was not provided with adequate time to express milk. (b) (6), (b) (7)(E) stated that Mr. Otachel threatened to reduce (b) (6), (b) (7)(E) hours so that (b) (6), (b) (7)(E) will be able to express milk outside work hours. There is no evidence to show that this happened.

This issue was discussed briefly with Mr. Otachel during the initial conference phone call. He stated that he has done everything he could do. He said that (b) (6), (b) (7)(E) hires the employees and he has given (b) (6), (b) (7)(E) permission to hire

additional employees to cover the times (b) (6), (b) (7)(C) needs to nurse. He also stated that as far as he was concerned, the issue has been resolved.

Section 6: No violations disclosed.

Section 7: Violations found. The employer did not ensure that (b) (6), (b) (7)(C) had a reasonable amount of break time to express milk as frequently as needed. On many occasions, (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) was interrupted by customers because there were no other employees to wait on the customers while (b) (6), (b) (7)(C) expressed milk.

Section 11: Violations found. Mr. Otachel did not provide the requested documentation. (Ex.)

Section 12: No violations disclosed.

DISPOSITION:

The final conference was not held. Mr. Otachel never responded to emails or phone calls to discuss (b) (7)(E). FLSNM fact sheet was sent to local branch office.

(b) (6), (b) (7)(C) was contacted on May 3, 2017 and (b) (6), (b) (7)(C) stated that at this time, everything is fine. (b) (6), (b) (7)(C) stated that Mr. Otachel was allowing (b) (6), (b) (7)(C) to schedule another person to assist (b) (6), (b) (7)(C) during the time (b) (6), (b) (7)(C) needs to express milk. (b) (6), (b) (7)(C) also indicated that (b) (6), (b) (7)(C) was preparing to leave the employment of LA Tan for another job.

On June 14, 2017, (b) (6), (b) (7)(C) was contacted as a follow-up to the last conversation. (b) (6), (b) (7)(C) stated (b) (6), (b) (7)(C) left LA Tan on May 31, 2017.

Recommendation: Close case.

Publications provided: FLSNM fact sheet #73.

(b) (6), (b) (7)(C)

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1820080 Originating District: Columbus OH District Office
Local Filing Number: 2017-163-16484 Investigating District: Columbus OH District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 04/19/2017
Assignment Date: 04/19/2017

Employer Information

Trade Name: Staff Management|SMX

Legal Name: TrueBlue, Inc.

Address: 5064 St Rt 30

EIN: 32-0361876

County: Crawford

NAICS Code: 336399

Crestline, OH44827

No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 04/03/2017 BNPI: 100
To: 05/19/2017 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: 06/23/2017
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

Total Violations Under FLSA: 1 \$0.00

WHISARD Compliance Action Report

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	1	1	\$2,891.49	\$2,891.49	\$0.00	\$0.00	

FMLA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FMLA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	
Total Violations Under FMLA:	1						\$0.00

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	1	Unduplicated Employees Agreed:	1
Total Amount BWs Computed:	\$2,891.49	Total Amount BWs Agreed:	\$2,891.49
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

(26 hrs) Limited Investigation under FLSNM. (b) (7)(E) was retaliated against by being denied reinstatement due to (b) (7)(E) need to express breastmilk as covered under 7(r). Enterprise coverage under 3(s)(1)(a), more than 50 EEs, EE non-exempt under section 7. (b) (7)(E). ER ATC/ATFC. EE reinstated, provided required facilities and breaks. EE found due \$2,891.49 in BWs. ER ATP BWs by 6/23/17. Recommend case be administratively closed (b) (7)(E)

WHI Signature: _____ Date: 06/07/2017

Reviewed By: _____ Date: _____

FLSA Nursing Mother Narrative

TrueBlue, Inc.
d/b/a Staff Management|SMX
5064 St. Rt. 30
Crestline, OH 44833
(419) 526-7403

Case ID: 1820080
EIN: 32-0361876

Main Office:
TrueBlue, Inc.
1015 A St.
Tacoma, WA 98402

Corporate Attorney:
Monica Torres
(253) 573-5024

Case Assignment Information: This investigation was initiated as (b) (7)(E) (b) (6), (b) (7)(C) [REDACTED] This case was a limited investigation of the business under the Fair Labor Standards Act (FLSA), specific to (b) (6), (b) (7)(C) [REDACTED] under 7(r) of the FLSA, Break Time for Nursing Mothers.

Scope and Period of Investigation:

A limited investigation was conducted for the time period April 3, 2017 to May 19, 2017.

Coverage

Number of Employees:

There were approximately (b) (4) current employees of the establishment at the time of the investigation; the company did not provide the number of establishment and employees of the enterprise, but their website states the company has office globally (United States, Canada, Australia, Poland, and India). (Exhibit C-4).

Annual Dollar Volume (ADV): (Exhibit C-3)

FY	2015	2016
ADV	(b) (4)	

Interstate Commerce:

The enterprise provides workforce management solutions to various companies throughout the world with offices in the United States, Canada, Australia, Poland, and India. The facility where (b) (6), (b) (7)(C) worked (Pittsburgh Glass Works) manufactures automotive glass for vehicles made by General Motors, Chrysler, and Ford and is shipped globally. Staff Management|SMX employees apply components to the glass for installation, e.g., locator pins, weather stripping.

FLSA Coverage for Employer:

Enterprise Coverage: For the period of investigation, the enterprise was covered under the FLSA 3(s)(1)(A). The ADV for the enterprise was over \$500,000 per year, there were more than two employees, and all employees handled goods produced and moved in interstate commerce.

Employee Coverage under FLSA 7(r) – Break Time for Nursing Mothers:

The employer is covered under enterprise coverage under the FLSA. The employer also has more than 50 employees, which exempts the employer from claiming undue hardship as a small business. (b) (6), (b) (7)(C) is not exempt under the FLSA; therefore, the employer is subject to the

requirements of FLSA 7(r).

Business Structure:

The location where (b) (6), (b) (7)(C) worked is one of multiple locations across the country where Staff Management|SMX provides workforce solutions such as staffing, workforce management, and recruiting. Staff Management|SMX is a division of Seaton Corp which is a subsidiary of TrueBlue, Inc. The company also does business under the names: People Management (Centerline, PlaneTechs, SIMOS), PeopleScout, and PeopleReady (Exhibit C-4).

Main Office District Office (MODO):

Staff Management|SMX is a division of Seaton Corp which is a subsidiary of TrueBlue, Inc. TrueBlue, Inc. is headquartered in Tacoma, WA with Seattle, WA DO as the MODO. (b) (7)(E)

(Exhibit D-1, D-2)

3(d) Employer:

Michael Apking, Senior Account Manager, met the definition of the 3(d) employer. Michael Apking was involved in the daily operations conducted by the Stagg Management|SMX employees at the PGW facility and had the ability to hire and fire employees, gave instructions to employees, and acted in the interest of the business.

Exemptions

Not Applicable. (b) (6), (b) (7)(C), was found to be paid on an hourly basis and not exempt under the FLSA Section 7. (Exhibit B-1a, D-4)

Status of Compliance

History:

A Whisard history search under Staff Management|SMX, Seaton Corp., and TrueBlue, Inc. showed an extensive history of violations under the FLSA and FMLA. No previous violations under FLSNM were found.

Reason for Investigation:

This investigation was initiated as (b) (7)(E) (b) (6), (b) (7)(C) This case was a limited investigation of the business under the Fair Labor Standards Act (FLSA), specific to (b) (6), (b) (7)(C) under 7(r) of the FLSA, Break Time for Nursing Mothers.

(b) (7)(E) Information:

(b) (6), (b) (7)(C) (b) (7)(E) (Exhibit B-1b). (b) (6), (b) (7)(C) is a current employee of the company and began working for the company (b) (6), (b) (7)(C) (b) (7)(E) (b) (6), (b) (7)(C) went on approved maternity leave (non-FMLA protected) (b) (6), (b) (7)(C) and when (b) (6), (b) (7)(C) submitted a release to return to work from (b) (6), (b) (7)(C) physician (b) (6), (b) (7)(C) (Exhibit B-1c), (b) (6), (b) (7)(C) was denied reinstatement. (b) (6), (b) (7)(C) states (b) (6), (b) (7)(C) was told by Michael Apking, Senior Account Manager, (b) (6), (b) (7)(C) was denied reinstatement because the employer could not accommodate (b) (6), (b) (7)(C) need for an adequate location to express (b) (6), (b) (7)(C) breast milk and the time needed during the work day to do so. (Exhibit B-1a)

The employer provides two paid breaks per shift, one ten (10) minute break and one twenty (20) minute break (Exhibit D-9). (b) (6), (b) (7)(C) doctor indicated on (b) (6), (b) (7)(C) release to return to work form that (b) (6), (b) (7)(C) would need 25 to 30 minutes 3 to 4 times daily to express breast milk, in addition to the need for a private area to pump breast milk. (Exhibit B-1c)

7(r) – Break Time for Nursing Mothers

As stated above, the employer is covered under the FLSA 3(s)(1)(a), enterprise coverage, and has more than 50 employees working for the enterprise; additionally, (b) (6), (b) (7)(C) is not exempt under the FLSA, and is covered under the FLSA 7(r), Break Time for Nursing Mothers.

Violations found:

(b) (6), (b) (7)(C), was discriminated against and (b) (6), (b) (7)(C) rights violated under FLSA 7(r) and was retaliated against under FLSA 15(a)(3) by not reinstating (b) (6), (b) (7)(C) to (b) (6), (b) (7)(C) position due to the employer's refusal to provide the necessary facilities for her to express breastmilk and the reasonable amount of break time needed to do so.

It was determined that (b) (6), (b) (7)(C) was entitled to, and desired, reinstatement to (b) (6), (b) (7)(C) former position and due back wages for the period from (b) (6), (b) (7)(C) release to return to work to the date of reinstatement.

(b) (7)(E)

[REDACTED]

[REDACTED]

[REDACTED]

(Exhibit A-1)

Disposition

The initial conference (IC)/Site Visit was held on May 11, 2017; WHI (b) (6), (b) (7)(C) and Staff Management|SMX Senior Account Manager Michael Apking were present. WHI toured the establishment. WHI noted that the required FLSA, FMLA, and CCPA posters were not posted. WHI advised the employer and provided the necessary posters with the request that they be posted. The requirements under FLSA 7(r) were discussed and the prohibition of retaliation under 15(a)(3) was also addressed.

Basic business location information was obtained from Mr. Apking and the remainder of the information obtained during the investigation was provided by the employer's attorney.

WHI determined that the business was covered under the FLSA and specifically under the regulations that cover the employer and employees for providing accommodations for nursing mothers under FLSA 7(r). Portions of the employer's handbook were reviewed.

Mr. Apking stated after contact by WHI and prior to the visit, he had located two potential spaces, one primary and one alternate, which (b) (6), (b) (7)(C) could use for expressing breastmilk. He stated he believe both spaces met the requirements or could be modified to meet the requirements. One space was an unused office space (Exhibit D-7) which was also used by employees of PGW for the purposes under FLSA 7(r). The second space was a conference room (Exhibit D-8) which would only require the door window be covered when in use. Both spaces were determined by WHI to meet the requirements under FLSA 7(r).

The reason for not providing the requirements under FLSA 7(r) was discussed with Mr. Apking. He stated the property was owned by PGW and there was no additional space leased to provide the accommodations needed by (b) (6), (b) (7)(C). He also initially added that (b) (6), (b) (7)(C) was still on maternity leave and he had not seen any paperwork for (b) (6), (b) (7)(C) release to return to work. He said (b) (6), (b) (7)(C) was given maternity leave and an "open book" for (b) (6), (b) (7)(C) return to work. (b) (6), (b) (7)(C) was told to only call him.

After showing Mr. Apking the return to work form provided by (b) (6), (b) (7)(C) doctor, Mr. Apking acknowledge it was his handwriting on the form and after looking through (b) (6), (b) (7)(C) files again he found the

form. He stated he in fact had received the form and forwarded it to corporate.

A call was held with Monica Torres, Attorney for TrueBlue Inc., on 5/16/17. The site visit and proposed spaces to be used by (b) (6), (b) (7)(C) for expressing breastmilk were discussed and the agreement by PGW to allow (b) (6), (b) (7)(C) to use the same space as their employee uses as the primary space with a conference room as the alternate. The return to work documentation for (b) (6), (b) (7)(C) was also discussed and Ms. Torres was advised Mr. Apking acknowledge receipt of the documentation and stated he had forwarded it to corporate HR or Risk Management. Ms. Torres stated she would look into this further. Ms. Torres was also made aware that Mr. Apking stated he understood the requirement for (b) (6), (b) (7)(C) to be permitted to take breaks as needed for expressing breastmilk.

A discussion was also held on (b) (6), (b) (7)(C) actual return to work. WHI agreed that there was no reason to further delay (b) (6), (b) (7)(C) return while records were being reviewed and any back wages computed. Ms. Torres stated someone from the company would be in contact with (b) (6), (b) (7)(C) to make arrangements. Ms. Torres added that she would have the documentation and records to WHI by the end of the week.

(b) (6), (b) (7)(C) was contacted on 5/16/17 and advised that someone from the company may be in contact with (b) (6), (b) (7)(C) to make arrangements for her return to work. (b) (6), (b) (7)(C) was asked to contact WHI to let (b) (6), (b) (7)(C) know when this happens.

Time and payroll records were received by the company on 5/17/17. Back wages were computed due and the company's attorney contacted to discuss date for reinstatement and settlement. The attorney was not available and a message was left on (b) (6), (b) (7)(C) voicemail.

(b) (7)(E)

(Exhibit D-10).

(b) (6), (b) (7)(C) contacted WHI on 5/18/17 and told (b) (6), (b) (7)(C) had been contacted by the company and was scheduled to return to work on 5/22/17. (b) (6), (b) (7)(C) was advised to contact WHI if the required facilities and break times are not provided.

Per approval from ADD Dudash, a final conference was held with the company's attorney on 5/24/17 via telephone. The company's attorney re-iterated the company's agreement to comply and ensured future compliance. The attorney was e-mailed the WH-56 for signature.

The signed WH-56 was returned on 6/6/17 with an agreement to pay the back wages found due by 6/23/17. The company's attorney was e-mailed the WH-58 and advised that (b) (6), (b) (7)(C) cannot be required to sign a private release as a condition of being paid the back wages found due under this investigation. (Exhibit D-6)

Publications Provided:

FLSA Handy Reference Guide

Fact Sheets: 44, 73, 77A

(b) (6), (b) (7)(C) **Notification:** (b) (6), (b) (7)(C) was notified of the back wages found due on 6/7/17.

(b) (7)(E)

Recommendations: Recommend this case be administratively closed (b) (7)(E)

POC for BWF: Monica Torres, Corporate Attorney, (253) 573-5024

(b) (6), (b) (7)(C), WHI
6/7/17

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1820778 Originating District: Detroit MI District Office
Local Filing Number: 2017-185-10442 Investigating District: Detroit MI District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 04/27/2017
Assignment Date: 04/27/2017

Employer Information

Trade Name: Fresenius Medical Center
Address: 18430 Livernois Ave.

Detroit, MI 48221

Legal Name: Bio-Medical Applications of Michigan, Inc.
EIN: 04-2516906
County: Wayne
NAICS Code: 621492
No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 03/06/2017 BNPI:
To: 05/03/2017 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☐
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

FLSNM Limited Investigation. 203(s)(1)(A) coverage, Sec. 207(r) violation: ER failed to provide (b)(1) with an adequate space to express milk. FC held via teleconf 5/24/17. ER agreed fully to future compliance and provide a private space for (b)(1) to express milk. Recommend case be administratively closed. Pubs provided FLSA - The Fair Labor Standards Act, HRG, CL-101 and FSs 28D, ,43, 44, 73 and 77.

WHI Signature: _____ Date: 05/25/2017

Reviewed By: _____ Date: _____

Legal Name: Bio-Medical Application of Michigan Inc. (BMA of Michigan)

DBA Fresenius Medical Center

Employer Contact: Emily Petroski

Jackson/Lewis Attorneys at Law

2000 Town Center Suite 1650

Southfield MI 48075

248-936-1922

EMILY.PETROSKI@JACKSONLEWIS.COM

FLSA NARRATIVE

CASE ASSIGNMENT INFORMATION:

(b) (7)(E) **Data:** This investigation was initiated (b) (7)(E) (b) (6), (b) (7)(C) under the Break Time for Nursing Mothers (Section 29 U.S.C. 207 (r) of the Fair Labor Standards Act). (b) (6), (b) (7)(C) of Fresenius Medical Center (b) (7)(E) the employer did not provide (b) (6), (b) (7)(C) with adequate place to express milk upon (b) (6), (b) (7)(C) return to work.

(b) (6), (b) (7)(C) (b) (7)(E)

(b) (6), (b) (7)(C) provided signed (b) (7)(E)

COVERAGE:

Enterprise Coverage: Employer's representative, Attorney Ms. Emily Petroski stated BMA of Michigan DBA Fresenius Medical Center does not dispute that it is covered by the FLSA and at least two full time employees handled goods that moved through interstate commerce, enterprise coverage has been established for investigative period. (See exhibit C1a)

All employees of the establishments were covered on an enterprise basis for the entire investigative period under Section 203(s)(1)(A) of the FLSA.

Investigation Type: The investigation was limited to provision enforced under the Break Time for Nursing Mothers under Section 29 U.S.C. 207 (r) of the FLSA.

The period of investigation: March 6, 2017 through May 3, 2017

The period of investigation covered the time when (b) (6), (b) (7)(C) requested private place to express breast milk upon (b) (6), (b) (7)(C) return to work until the establishment was physically investigated.

Previous History: WHISARD did not find any previous history locally. This is the first investigation for this employer under the Break Time for Nursing Mothers under the FLSA.

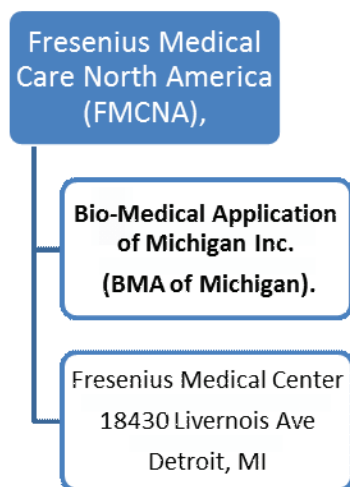
Nature of Business: Fresenius Medical Center provides dialysis to Kidney out-patients

MODO Information: The main office of the subject firm is located within the jurisdiction of the Boston Massachusetts District Office. (b) (7)(E)

(See exhibit E1)

Establishments Location: BMA of Michigan DBA Fresenius Medical Center provides dialysis to Kidney out-patients across the country; however Fresenius Medical Center located at 18430 Livernois Ave Detroit MI was the only establishment physically investigated.

Business Structure:



It is noted that Research found on firm's webpage stated: "Fresenius Medical Care North America some centers may be known as Fresenius Kidney Care or Fresenius Medical Care (FMC), as well as other names. Every center listed in our dialysis finder results is part of the Fresenius Kidney Care dialysis network."

Workforce: (b) (4) employees are employed at Fresenius Medical Center located at 18430 Livernois, Detroit MI.

Section 203(d) Employer: Ms. Emily Petroski, representative and attorney of firm directly acts in the

interest of employer in relation to their employees. Therefore, she is identified as the employer as defined under FLSA Section 203(d).

EXEMPTIONS: No exemptions were challenged

STATUS OF COMPLIANCE

Investigative result of (b) (6), (b) (7)(C) (b) (7)(E) §207(r)(1)(b) (b) (7)(E) (b) (6), (b) (7)(C) that employer failed to provide (b) (6), (b) (7)(C) with a private place and adequate place to express milk (b) (7)(E)

May 3, 2017 during initial conference Office Manager, Margarette Crittdon was not there. However; WHI (b) (6), (b) (7)(C) did speak with Ms. Crittdon via telephone. Ms. Crittdon referred WHI (b) (6), (b) (7)(C) to company's Attorney and Representative Ms. Emily Petroski.

WHI (b) (6), (b) (7)(C) spoke with clinic secretary, (b) (6), (b) (7)(C). In (b) (6), (b) (7)(C) interview statement (b) (6), (b) (7)(C) stated on the first of day (b) (6), (b) (7)(C) returned to work (b) (6), (b) (7)(C) personally made conference room available for (b) (6), (b) (7)(C) to use to express milk. (b) (6), (b) (7)(C) further stated (b) (6), (b) (7)(C) left key in nurse's station so if (b) (6), (b) (7)(C) wasn't available (b) (6), (b) (7)(C) would have key available when needed to express milk. (See Exhibit B2)

WHI (b) (6), (b) (7)(C) spoke with Attorney Ms. Petroski. Ms. Petroski gave ignorance as the reason for the violations and said this was her first time hearing of (b) (7)(E) and requested an opportunity to review details of (b) (7)(E) and prepare requested documents listed in appointment letter.

(b) (6), (b) (7)(C) provided a statement to WHI (b) (6), (b) (7)(C) statement of accounts was very different from (b) (6), (b) (7)(C) statement. Prior to returning to work (b) (6), (b) (7)(C) contacted office manager, Ms. Crittdon to inform (b) (6), (b) (7)(C) would need private place to express milk. Ms. Crittdon replied "she can't agree to facility allowing (b) (6), (b) (7)(C) to pump" (b) (6), (b) (7)(C) told (b) (6), (b) (7)(C) it was the law and contacted The Department of Labor for assistance prior to her returning to work.

(b) (6), (b) (7)(C) further stated (b) (6), (b) (7)(C) had to go to (b) (6), (b) (7)(C) car to express milk on (b) (6), (b) (7)(C) first day back to work. (b) (6), (b) (7)(C) also stated (b) (6), (b) (7)(C) never expressed milk in conference room, and when (b) (6), (b) (7)(C) tried to obtain key to room (b) (6), (b) (7)(C) had to wait until nurse at the nursing station was free which resulted in (b) (6), (b) (7)(C) uniform. (See full statement attached to (b) (7)(E))

Section 206-Minimum Wage: The investigation was limited to enforcement under the Break Time for Nursing Mothers of Section 29 U.S.C. 207 (r) of the FLSA.

Section 207-Overtime: The investigation was limited to enforcement under the Break Time for Nursing Mothers of Section 29 U.S.C. 207 (r) of the FLSA.

Section 207 (r): (b) (6), (b) (7)(C) was not exempt from section 207 of the FLSA therefore (b) (6), (b) (7)(C) was entitled to all the provisions that is enforced under FLSA 207 (r) (1) of the FLSA.

Section 211, Record Keeping: The investigation was limited to enforcement under the Break Time for Nursing Mothers of Section 29 U.S.C. 207 (r) of the FLSA.

Section 212, Child Labor: The investigation was limited to enforcement under the Break Time for Nursing Mothers of Section 29 U.S.C. 207 (r) of the FLSA.

(b) (7)(E)

Disposition

Final conference was held on Wednesday, May 24, 2017 via telephone conference Attorney Ms. Emily Petroski represented Fresenius Medical Center and WHI (b) (6), (b) (7)(C) represented Wage and Hour Division.

WHI (b) (6), (b) (7)(C) discussed the applicable Fair Labor Standards Act requirements specifically Section 207(r) Break Time for Nursing Mothers and Fact Sheet #73, Break Time for Nursing Mothers under the FLSA and Reasonable Break time for Nursing Mothers Notice, Child Labor and Family and Medical Leave Act.

WHI (b) (6), (b) (7)(C) discussed the findings of investigation:

§207(r)(1)(b) Break Time for Nursing Mothers

WHI (b) (6), (b) (7)(C) explained to Ms. Petroski when Fresenius Medical Center would not provide a private place for (b) (6), (b) (7)(C) to express milk a violation were disclosed under Section 29 U.S.C. 207 (r)(1)(b) of the FLSA for the Break Time for Nursing Mothers.

Retaliation

WHI (b) (6), (b) (7)(C) informed Attorney Petroski according to (b) (6), (b) (7)(C) is now on leave because (b) (6), (b) (7)(C) was threatened by Office Manager Margarette Crittendon (if Ms. Crittendon lost her job as a result of (b) (6), (b) (7)(C) (b) (7)(E) WHI (b) (6), (b) (7)(C) discussed Fact Sheet 77- Prohibiting Retaliation under the FLSA with attorney.

Attorney Petroski asked if threat was documented via text or email. WHI (b) (6), (b) (7)(C) told (b) (6), (b) (7)(C) stated threat was made verbally and again referred attorney to fact sheet 77 regardless text email or verbal retaliation is prohibited. Ms. Petroski agreed to comply.

Employer response and remedies:

Reason given by Attorney Petroski was that (b) (6), (b) (7)(C) (b) (7)(E) was an isolated case and Fresenius Medical Center has in the past made space available for employees to express milk and there

was never an issue.

WHI (b) (6), (b) (7)(C) asked if there was never an issue in the past how did we get here. Attorney stated she was informed by manager, Margarette Crittendon, she never knew (b) (6), (b) (7)(C) was pregnant due to being obese. WHI (b) (6), (b) (7)(C) explained to attorney that should not have a bearing on the fact (b) (6), (b) (7)(C) needed a place to express milk once it became known and returned to work.

Attorney Petroski stated that Fresenius Medical Center will provide (b) (6), (b) (7)(C) a private and adequate place to express breast milk upon (b) (6), (b) (7)(C) return to work. The conference room will be made available in the event the conference room is not available the Dietician or Social Worker offices will be made available. The keys to conference room can be obtained at the front desk or from the RN on duty. (See exhibit C1k)

Attorney Petroski assured WHI (b) (6), (b) (7)(C) that the Fresenius Medical Center is currently aware and complying with the laws enforced by the Fair Labor Standard Act and in specific with Section 207 (r). Attorney Petroski has agreed fully to continue compliance with the laws enforced by the Fair Labor Standard Act and in specific with 29 U.S.C. 207 (r) of the FLSA.

WHI (b) (6), (b) (7)(C) contacted (b) (6), (b) (7)(C) and advised (b) (6), (b) (7)(C) of the investigations findings and results.

Recommendations: It is recommended that the case be administratively closed without further action.

Publications: Attorney Emily Petroski was mailed the following documents:

The Fair Labor Standards Act
Fact Sheet 28D-Employer Notification Requirements under the FMLA
Fact Sheet 43- Overview of Youth Employment
Fact Sheet 73 – Break Time for Nursing Mothers under FLSA
Fact Sheet 77- Prohibiting Retaliation under the FLSA
HRG – Handy Reference Guide

(b) (6), (b) (7)(C) _____ Date _____
Wage and Hour Investigator

Mail correspondence to:

Ms. Emily Petroski
Jackson/Lewis Attorneys at Law
2000 Town Center Suite 1650
Southfield MI 48075

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1821503 Originating District: Detroit MI District Office
Local Filing Number: 2017-185-10457 Investigating District: Detroit MI District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 05/04/2017
Assignment Date: 05/18/2017

Employer Information

Trade Name: St. Joseph Mercy Ann Arbor
Address: 5301 MCauley Drive

Ypsilanti, MI 48197

Legal Name: Trinity Health-Michigan
EIN: 38-3572350
County: Washtenaw
NAICS Code: 622110
No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 03/10/2017 BNPI:
To: 06/01/2017 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

A FLSNM (b) (7)(E) case. Covered ER & a entitled ee. FLSNM violation was found. ER failed to guarantee express milk break to (b) (7)(E) FC on 6/1/17 w/Mandi Murray (general counsel), Tonia Schemer (executive HR director) and Anne Mercer (HR consultant). ER has agreed in future compliance and resolved (b) (7)(E) .. It is recommended that the case be administratively closed

WHI Signature: _____ Date: 06/12/2017

Reviewed By: _____ Date: _____

Narrative Report

Case ID: 1821503

Local Case Number: 2017-185-10457

Legal Name: St. Joseph Mercy Ann Arbor

Do Business As: St. Joseph Mercy Ann Arbor

Address: 3501 E. Huron River Dr.
Ann Arbor, MI 48106

Tax ID: 38-3572350

Contact: Mandi Murray

General Counsel, St. Joseph Mercy Ann Arbor and Livingston

Associate Counsel, Trinity Health

3501 E. Huron River Dr.

Ann Arbor, MI 48106

(734) 712-3577 (phone)

Email: murraym@trinity-health.org

Tonia Schemer (Executive Human Resources Director)

3501 E. Huron River Dr.

Ann Arbor, MI 48106

Anne Mercer (Human Resources Consultant)

Administration Services Building

5305 E. Huron River Dr. Ste. 18-10

Ann Arbor, MI 48106

Headquarters:

Trinity Health-Michigan

120555 Victor Parkway

Livonia, MI 48152

Corporate Office:
President of St. Joseph Mercy Ann Arbor: David Brooks
Vice President: Alonzo Lewis

Case Assignment Information

(b) (6), (b) (7)(C) Information

This investigation was initiated (b) (7)(E) (b) (6), (b) (7)(C) of St. Joseph Mercy Ann Arbor located at 3501 E. Huron River Drive, Ann Arbor, MI 48106. (b) (6), (b) (7)(C) (b) (7)(E) the employer failed to guarantee (b) (6), (b) (7)(C) an express breast milk break for (b) (6), (b) (7)(C) nursing child (b) (6), (b) (7)(C)

A limited investigation was conducted, which was limited to the findings that are discussed in this report. (b) (7)(E) FLSNM violation was found. The employer failed to guarantee an express milk break to (b) (6), (b) (7)(C). The Employer has agreed in future compliance and resolved (b) (7)(E) (See the ER's letter dated June 2, 2017)

FLSNM Coverage

FLSNM coverage applies. St. Joseph Mercy Ann Arbor is a health care provider and hospital. The firm employs over (b) (4) employees. The coverage is established pursuant to FLSA 3(s)(1)(B).

The firm also operates the other facilities within Michigan.
(See the ER's letter dated June 2, 2017)

Investigation Period: 3/10/2017 – 6/1/2017

History: No violation history found for this employer.

MODO: The Detroit District Office is the MODO. The employer operates number of facilities within Michigan. The MODO ID # is (b) (6), (b) (7)(C).

Exemptions

Section 13(a)(1) and part 541.100 exemptions does not apply to (b) (6), (b) (7)(C) because (b) (6), (b) (7)(C) is paid on a hourly basis.

Entitlement to have break to express breast milk

(b) (6), (b) (7)(C) is entitled to have breaks to express breast milk. (b) (6), (b) (7)(C) is a non-exempt employee and is paid on an hourly basis.
(See Exhibit D-4)

Qualifying reason for break

(b) (6), (b) (7)(C) qualifies for breaks to express breast milk for (b) (6), (b) (7)(C) nursing child (b) (6), (b) (7)(C)

Status of Compliance

FLSNM violation found. The employer failed to guarantee an express milk break to (b) (6), (b) (7)(C), a nursing mother.

(b) (6), (b) (7)(C) works in an emergency department. (b) (6), (b) (7)(C) is in charge of respiratory therapist team. (b) (6), (b) (7)(C) supervises 11 other respiratory therapists.

(b) (6), (b) (7)(C) requested breaks to express milk for (b) (6), (b) (7)(C) nursing child in March 2017. The employer has provided the place and break time for (b) (6), (b) (7)(C) and the other nursing mothers to express breast milk for their nursing children. The employer had developed an Employee Lactation Accommodations at SJMH.
(See Exhibit D-5)

The violation only occurred to (b) (6), (b) (7)(C) due to the nature of (b) (6), (b) (7)(C) job duties. (b) (6), (b) (7)(C) is in charge of all respiratory therapists' medical issues, (b) (6), (b) (7)(C) must respond to emergency calls immediately, even in the

middle of pumping breast milk.

(b) (7)(E) (b) (6), (b) (7)(C) discussed (b) (6), (b) (7)(C) problem with (b) (6), (b) (7)(C) manager (b) (6), (b) (7)(C) and human resource consultant (b) (6), (b) (7)(C). The management attempted to resolve (b) (6), (b) (7)(C) issue by bringing in back up staff (PFT) and (CST) to cover (b) (6), (b) (7)(C) break time as needed. In addition, (b) (6), (b) (7)(C) manager, (b) (6), (b) (7)(C), also offered to cover (b) (6), (b) (7)(C) break time when needed. (See Exhibit B-1, D-2 & D-3)

However, the solution has not entirely resolved (b) (6), (b) (7)(C) issue. (b) (6), (b) (7)(C) needs three breaks a day (12 hours shift) for expressing milk. Due to the nature of her working environment (emergency department) and (b) (6), (b) (7)(C) job duties, some days (b) (6), (b) (7)(C) could get three quality breaks and some days (b) (6), (b) (7)(C) could get only one quality break. (See Exhibit B-1)

Disposition

On 6/1/2017, WHI (b) (6), (b) (7)(C) had a final conference with Ms. Mandi Murray (general counsel), Tonia Schemer (executive HR director) and Anne Mercer (HR consultant) at Human Resources Department of St. Joseph Mercy Ann Arbor located at 5303 MCauley Drive, Ypsilanti, MI 48197. WHI discussed the FLSNM violation with the employer and explained FLSNM coverage and requirements. The employer was provided with Factsheet #73 and FLSA Sec. 207(r).

The employer agreed to future compliance. The employer has developed a new Lactation Accommodation policy as a response to this investigation. (See Exhibit D-1)

The employer has resolved (b) (6), (b) (7)(C) issue as follows:

The management will schedule three fixed breaks a day for (b) (6), (b) (7)(C) and a specific one staff each working day to cover (b) (6), (b) (7)(C) express milk break period.

(b) (6), (b) (7)(C) will need to hand over (b) (6), (b) (7)(C) head phone to (b) (6), (b) (7)(C) backup staff before each of (b) (6), (b) (7)(C) break, and take (b) (6), (b) (7)(C) head phone back after (b) (6), (b) (7)(C) break because all activities in emergency department are

communicated by head phone.

(See page #3 of the ER's letter dated June 2, 2017)

Recommendation

(b) (7)(E) it is recommended that the case be administratively closed.

(b) (6), (b) (7)(C)

Investigator

June 9, 2017

Addendum to File - ADD Bowlby

(b) (6), (b) (7)(C) is a non-exempt hourly supervisor. (b) (6), (b) (7)(C) did not meet the test for exemption under Section 13(a)(1) of the FLSA as (b) (6), (b) (7)(C) was paid by the hour for (b) (6), (b) (7)(C) work.

WHISARD Compliance Action Report

U.S. Department of Labor Wage and Hour Division

Case ID: 1831785 Originating District: Des Moines IA District Office
Local Filing Number: 2017-180-15542 Investigating District: Des Moines IA District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 08/31/2017
Assignment Date: 08/31/2017

Employer Information

Trade Name: Boys Town National Research Hospital Legal Name: Father Flanagan's Boys' Home
Address: 14000 Hospital Rd. EIN: 47-0376606
County: Douglas
NAICS Code: 622110
Boys Town, NE68010 No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 08/25/2017 BNPI:
To: 09/05/2017 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☒ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: 10/20/2017
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	1	1	\$228.00	\$228.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	1	Unduplicated Employees Agreed:	1
Total Amount BWs Computed:	\$228.00	Total Amount BWs Agreed:	\$228.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

21 hrs - (b) (6), (b) (7)(C), nonexempt hrly ee, (b) (7)(E) on 08/25/2017, not given break time within reasonable time of asking and had to wait 2 1/2 hrs, for a total of 5 1/2 hours between pumping. Also (b) (7)(E) retaliation resulting in lost wages for 4 days. (b) (7)(E) that lactation room unsafe (b) (7)(E). On 09/15/17, tel. FC w/ Adrian Randolph, in-house attorney, who pledged future compliance and ATP. Pubs: 1282, 1318, fs 44, 73.

WHI Signature: _____ Date: 09/25/2017

Reviewed By: _____ Date: _____

**FLSA Narrative
WHISARD # 1831785
Local File # 2017 180 15542**

Legal: Father Flanagan's Boys' Home
Trade: Boys Town National Research Hospital
14000 Boys Town Hospital Road 555 North 30th Street
Boys Town, NE 68010 Omaha, NE 68131
(402) 778-6000 (surgery center) (402) 498-6345 (human resources)

COVERAGE

Father Flanagan's Boys' Home, commonly known as Boys Town, was founded on 12/12/1917 as an orphanage (see Exhibit C-2a). The subject of this limited investigation, Boys Town National Research Hospital (BTNRH), which opened in 1977, is a subsidiary of Father Flanagan's Boys' Home. BTNRH has two hospitals, at the addresses listed above, and six clinics (see Exhibit D-10a). BTNRH is a hospital engaged in the care of the sick; hence, Section 203(s)(B) coverage is applicable.

This was a limited investigation to address the break time for nursing mother's (b) (7)(E) (b) (6), (b) (7)(C); thus the investigative period was limited to 08/25/2017 to 09/05/2017.

EIN is 47-0376606. BTNRH has 8 branch locations. The President is Rev. Steven E. Boes (see Exhibit C-1a, C-3a).

MODO

The Des Moines DO is the MODO. (b) (7)(E)

EXEMPTIONS

Since this a limited investigation, no determinations concerning exemptions were made other than that (b) (6), (b) (7)(C) who worked as an hourly paid Certified Nurse Aid, was not exempt.

STATUS OF COMPLAINT

(b) (7)(E) Data

This limited investigation was set up to investigate the break time for nursing mother (b) (7)(E) of (b) (6), (b) (7)(C) (b) (7)(E) on 08/25/2017 (b) (6), (b) (7)(C) had to wait more than six hours before being relieved to go extract breast milk,

which was not reasonable because (b) (6), (b) (7)(C) needs to extract milk every 2½ to 3 hours. (b) (6), (b) (7)(C) (b) (7)(E) because (b) (6), (b) (7)(E) (b) (6), (b) (7)(C) was called off the work schedule in retaliation and lost four days of work. (b) (6), (b) (7)(C) also (b) (7)(E) the lactation room was unsafe. (b) (7)(E) Although BTNRH denies any violation, BTNRH agreed to pay (b) (6), (b) (7)(C) lost wages of \$228.00 in order to expediently resolve this (b) (7)(E)

Section 207(r)(1)

Michael Gell, BTNRH Human Resource manager, conveyed to WHI (b) (6), (b) (7)(C) that 70% of staff at BTNRH is female so they have clear policies in place. See Exhibit E-7 for Boy's Town's policy for lactating employees. Mr. Gell noted that BTNRH pays its employees while they are on lactation break, even though the Federal law does not require that. Mr. Gell conveyed that (b) (6), (b) (7)(C) had received approximately 130 paid breaks, average 30 minutes a break, with the longest being 45 minutes.

FINDINGS

Violation occurred on August 25, 2017

On August 25, 2017, BTNRH failed to provide (b) (6), (b) (7)(C) a break time within a reasonable amount of time of (b) (6), (b) (7)(C) initial request. (b) (6), (b) (7)(C) made (b) (6), (b) (7)(C) request around 7:30 am and relief was not provided until 2½ hours later, between 10 am to 10:15 am. See Exhibit E-12 for timeline. At the time of (b) (6), (b) (7)(C) original request, (b) (6), (b) (7)(C) had already gone between 2½ to 3 hours since last pumping, so all together she went 5½ hours without relief. BTNRH assertion that security officer, (b) (6), (b) (7)(C), offered timely relieve does not appear to be viable because (b) (6), (b) (7)(C) was not trained for the position. See Exhibit E-13

Retaliation

The investigation disclosed no direct evidence of retaliation, yet the fact pattern indicates it may have occurred. Although (b) (6), (b) (7)(C) may be the only PRN in the surgical department, the surgical department is just one department in the hospital. The skill-set of a CNA is interchangeable and not so highly specialized that (b) (6), (b) (7)(C) could not have been floated to other departments. In fact, based on the statement of (b) (6), (b) (7)(C) (see Exhibit E-4) staff in other department can provide relief while (b) (6), (b) (7)(C) is on break, which means that the hospital does float staff to departments needing coverage. (b) (7)(E)

See Exhibit A-1.

Lactation room

(b) (7)(E) that the lactation room is unsafe (b) (7)(E). Although small, the lactation room was clean, had no spider webs or exposed electrical wiring, and has a door for privacy. See pictures placed in file as

Exhibit E-9.

(b) (7)(E)

DISPOSITION

On 09/13/2017, Mr. Randolph had conveyed to WHI (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) had been called in and worked September 8th, 12th and 13th, and was scheduled to work the 14th and 15th. Also, a meeting had been arranged with (b) (6), (b) (7)(C) team to consult with them on the lactation policy, its implementation, and Boys Town's policy on anti-retaliation. See Exhibit D-10.

On 09/15/2017, WHI (b) (6), (b) (7)(C) held a telephonic final conference with Adrian Randolph, in-house counsel for BTNRH, who pledged future compliance and agreed to pay. Mr. Randolph conveyed that he had recommended to his client that they pay (b) (6), (b) (7)(C) but that it was working its way all the way to the top person, John Arch, who in charge of the hospital. Mr. Randolph said: "We didn't do anything wrong so why pay? And if we pay does it open the door to further accusations? See Exhibit D-12. Later in the day, Mr. Randolph sent an email to WHI (b) (6), (b) (7)(C) conveying that BTNRH agreed to pay \$228.00 to resolve this matter (see Exhibit D-16). On 09/25/2017, the signed WH 56 was sent to WHI (b) (6), (b) (7)(C) (see Exhibit D-17). Pubs: 1282, 1318, fact sheets 44, 73.

Employer's explanation

The explanation offered by the employer is that no violation occurred.

- ⌚ (b) (6), (b) (7)(C) was offered relieve in a timely manner by security officer, (b) (6), (b) (7)(C), and (b) (6), (b) (7)(C) declined the offer.
- ⌚ BTRNH asserts no retaliation occurred. "Since August 29, 2017, there has not been a need for PRN Unit Coordinator due to low census and full staffing." See Exhibit D-13c. The reason (b) (6), (b) (7)(C) was being called off was that (b) (6), (b) (7)(C) was PRN, not because (b) (6), (b) (7)(C) had (b) (7)(E) (b) (6), (b) (7)(C) is the only PRN for that department so when census is low and staffing is sufficient (i.e. no one with scheduled time off for vacation or PTO or FMLA or sick, etc.) then the first person to get called off is the PRN because full-time employees have to maintain a minimum number of hours to maintain fringe benefits. (b) (6), (b) (7)(C) was full-time and choose to go to PRN. (b) (6), (b) (7)(C) made this decision to step down to PRN two weeks before (b) (6), (b) (7)(E) any violation.
- ⌚ (b) (6), (b) (7)(C) cites as an example of retaliation a day when census was low, August 21, 2017, with only 4 patients scheduled yet (b) (6), (b) (7)(C) was allowed to work, but on August 30, 2017, when (b) (6), (b) (7)(C) was called off, census was 24 patients scheduled. On August 21, 2017 there was an eclipse of the sun and some staff took vacation time

off to go see it. On August 30, 2017, they were at full staff with no one taking scheduled time off. The determination to call off workers is driven by two factors, low census and staffing, not just low census.

- ⌚ The accusation that the lactation room is unsafe is simply not true. There is a panel door that (b) (6), (b) (7)(E) would have to open to see electrical wire, but the wire is behind a closed door. It's sanitary, clean, and well-lit. The lactation room is used frequently. No one else has complained. At any one time there are multiple employees who are nursing mothers and sometimes they have to coordinate availability amongst themselves with their direct supervisor help in coordinating schedules. The real reason she doesn't use the lactation room is (b) (6), (b) (7)(E) chooses to go to (b) (6), (b) (7)(E) car so she can listen to (b) (6), (b) (7)(E) stereo music in the car.

Recommendation

(b) (7)(E) a recommendation of an administrative closing (b) (7)(E)

(b) (7)(E)

(b) (7)(E) notification

On 09/18/2017, WHI (b) (6), (b) (7)(C) notified (b) (6), (b) (7)(C) of the findings and disposition.

(b) (6), (b) (7)(C)

Investigator

September 25, 2017

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1834227 Originating District: Kansas City KS District Office
Local Filing Number: 2018-221-16498 Investigating District: Kansas City KS District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 10/02/2017
Assignment Date: 10/03/2017

Employer Information

Trade Name: Via Christi Hospitals Wichita, Inc Legal Name: Ascension Health
Address: 929 N St. Francis Street EIN: 27-1965272
County: Sedgwick
NAICS Code: 622110
Wichita, KS 67211 No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 04/01/2017 BNPI: 2
To: 10/01/2017 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Full Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

Hours: 10.25 Sec 7(r) applic. (b) (7)(E) (b) (6), (f) was not allowed to use (b) (6), (f) (paid) breaks for NM but was instead required to clock out and not be paid for n/m breaks. (b) (f) also stated (b) (6), (f) used inappr facilities. Not substan. ER has dedicated lactation rooms available, and altho (b) (f) clocked out, (b) (6), (f) was paid for (b) (6), (f) lactation breaks as they were less than 30 minutes each (and ER system auto pays <30 min breaks). ER ATC with FLSA NM provisions. Pubs: NM Fact Sheet, NM Cards, links to WHD NM videos. (b) (f) adv

WHI Signature: _____ Date: 11/24/2017

Reviewed By: _____ Date: _____

Via Christi Health, Inc	316-259-4720 (Yardley cell)
A subsidiary of Ascension Health	316-858-4925 (Johnson office)
d/b/a	
Via Christi Hospitals Wichita, Inc	Fed ID#: 27-1965272
929 N St Francis	DUNS: 056577646
Wichita, KS 67214	CAGE: 5ZA47

FLSA NM Narrative

Reason for Investigation. This investigation was initiated (b) (7)(E) .

Coverage. Subject is engaged in the operation of three separate hospital campuses in Wichita, KS. Two are acute care facilities.

929 N St Francis, Wichita, KS 67214 (hospital)

3600 E Harry St, Wichita, KS 67218 (hospital)

8901 E Orme, Wichita, KS 67207 (behavioral health facility)

The parent company is Ascension Health, 101 South Hanley Rd., Suite 450
St. Louis, MO 63105, phone 314-733-8000. The FEIN # for Ascension is 31-1662309

This investigation was limited to the 3 Wichita campuses and their satellite locations in Wichita.

FLSA Coverage is asserted under section 3(s)(1)(B) of the Act, as this is a facility engaged in the care of the ill who (temporarily) reside on the premises. The employees handle hospital supplies, office supplies and medical supplies that have come from out of state.

PPACA, which came into effect as of 3/23/10, discusses provision of time and suitable space for expression of breast milk by a mother within 1 year of the birth of the child. It was found that PPACA is applicable to this ER, as the ER is FLSA covered.

The 3 Wichita locations have a total of (b) (4) employees (estimate) in any given pay period.

The period of investigation was 4/1/17 to 10/1/17. Less than 2 years was selected as the investigation period. (b) (6), (b) (7)(C) was employed only 4 weeks.

3(d) employer: Individual employee supervisors.

MODO Information: The STL DO is the MODO office. (b) (7)(E)

Contingent Workers: Not examined.

16(b) Actions : None related to Nursing Mothers.

Exemptions.

7(r)(3) – Inapplicable. ER does not meet the “hardship” clause, as they have substantially more than 50 employees and they readily have rooms available for use.

Section 7 – Applicable. Employees who are 541 exempt would be exempt from Section 7(r) of the Act.

Status of Compliance.

Prior History (all FLSA)

1812707 – Carondalet Long Term Care – Overland Park, KS – 2017 – n/v
1784325 – Borgess Nursing Home n/v
1788276 – Borgess Medical Center – n/v
1783836 – Carondalot Long Term Care – Blue Springs, MO – \$2400 for premium pay
1783834 – Carondalot Long Term Care – Kansas City – n/v
1733248 – Ascension Medical Group- n/v
1733248 – Ascension Medical Group – n/v
1586295 – Ascension Medical, St Louis, n/v

(b) (6), (b) (7)(C) Information: This investigation was initiated (b) (7)(E)

(b) (6), (b) (7)(C) that as a nursing mother within 1 year of the birth of (b) (6), (b) child, (b) (6), (b) was entitled to protections of Section 7(r) but was **not**:

1. Allowed to use a room which was adequate, sanitary and free from intrusion (used closet, then break room w/sign up, then manager's office)
2. Allowed to use paid breaks to express breast milk, but was instead forced to clock out AFTER (b) (6), (b) paid break to express breast milk.

(b) (7)(E) ER does have a 4 station lactation room on the 4th floor which was available to (b) (6), (b) (7)(C) chose to work with (b) (6), (b) supervisor to find a location closer to (b) (6), (b) office (less walk time?), and these facilities were not free from intrusion. (b) (6) did state that (b) (6), (b) supervisor told (b) (6), (b) (7)(C) didn't want (b) (6), (b) using the lactation room, as it was too far away, but (b) (6) was aware of rooms and they were available.

Although (b) (6), (b) (7)(C) was required to clock out for (b) (6), (b) time spent expressing breast milk, (b) (6), (b) was paid for this time. See A-1 for (b) (6), (b) time records and payrolls. The ER's timekeeping system does not deduct for any breaks of less than 30 minutes. (b) (7)(E) (b) (6), (b) that (b) (6), (b) "lost pay" because (b) (6), (b) was not allowed to express breast milk during (b) (6), (b) paid breaks.

See D-4 for ER's email regarding (b) (6), (b) (7)(C) use of time for expressing breast milk.

Section 7(r) – Nursing Mothers. General Discussion.

The ER utilizes a third party vendor (Sedgwick) to do their FMLA paperwork. The ER has no specific record of lactating mothers, other than those who took FMLA when they were FMLA eligible because of a pregnancy/birth. This FMLA information was utilized as the source for those who had a child within the last 6 months and who potentially had the need to express breast milk. WHI did not contact these individuals, but ER did make contact with over 30 women (both on campus and at other locations) to ask about their NM experiences. See ER emails at D-3

The following **potential** violations were identified:

Although ER provides access to a Lactation Room (on the 4th floor, with 4 different curtained areas), employees are also allowed to use other rooms that they "negotiate" with their

supervisor. Per employer contact with nursing mothers, it was found that these rooms were not always “free from intrusion,” and may have been a bathroom or room with a toilet (not sanitary). The other Via Christi campuses either have a lactation room (larger facilities) or have “quiet rooms” or “consultation rooms” that can be reserved/identified as lactation rooms as needed by staff.

(b) (6) states that (b) (6), (b) (6) was told by (b) (6), (b) (6) supervisor that (b) (6), (b) (6) was not to use the Lactation Room, as it was too far away from (b) (6), (b) (6) work station. This information was not verified other than by (b) (6), (b) (6) and as (b) (6), (b) (6) is no longer employed, and the issue of location of the break time is not an issue, no further work was done to discover the veracity of (b) (6), (b) (6) statement regarding (b) (6), (b) (6) supervisor. It is also noted that although (b) (6), (b) (6) had just hired on in August 2017, (b) (6), (b) (6) 1 year allowance (after birth of child) to be entitled to time to express breast milk, expired 10/1/17.

It would appear that the ER's supervisor (and assumed that other supervisors) do not have a working knowledge of the FLSA NM, as ER confirmed that no training has been conducted on the topic.

No specific violations could be identified.

Section 11. No violations disclosed. There is no recordkeeping component to Section 7(r). ER will be keeping track of those needing lactation rooms or suitable rooms for expressing breast milk.

Section 12. No violations disclosed.

Disposition. At the time of the initial conference, WHI (b) (6), (b) (7)(C) met with Bobbie Johnson (in house counsel), Marlene Yardley (HR associate) and Kristine Langrehr, Benefits Coordinator. All expressed a basic knowledge of the FLSA NM, and Johnson had pulled copies of the WHD FS, the WHD FAQ, and the WHD powerpoint from the WHD website.

A final conference was held on 11/2/17 at the establishment (929 N St Francis) with the same parties participating as in the initial conference. The basic provisions of 7(r) were again discussed, including that the ER is tasked with assuring that any facility used for expressing breast milk meet with the regulations, even if a “lactation room” exists for that purpose but is not

used. ER was also advised that FLSA NM provisions need to be conveyed to management staff, as well as employees, to facilitate open discussion of the need for time and the location of the activity.

To assure future compliance, the ER has agreed to:

- Give the Nursing Mother fact sheet to all those on a FMLA pregnancy leave as well as others on pregnancy leave (but not eligible for FMLA).

- Distribute same in the future to all taking pregnancy leave (whether FMLA or not).

- Distribute "nursing mother cards" to these same women, as well as have a supply available in the lactation rooms. A supply of 30 cards was provided.

- Consider distributing the lactation rooms about the Via Christi campus, allowing less walk time from various sites within the facility.

- Have those expressing breast milk identify what unit/location they are using for the purposes of expressing breast milk (if not the lactation room) and have Via Christi staff verify that the location meets the requirements of 7(r).

- Assure that similar policies, and distribution of lactation rooms, is present at other Via Christi campuses across Wichita.

- Assure that all supervisory staff is trained, via webinar or staff training, of FLSA NM provisions. ER plans to incorporate the FLSA NM fact sheet and/or powerpoint into their training, which will be held in December and January. Similar training will be available on line at any time, and will be given at future dates (for new hires or promoted individuals).

- Assure that there is greater employee awareness of the FLSA NM provisions by distribution of the FS and encouragement of discussions between supervisor and employees BEFORE they return from maternity leave so that a suitable lactation room is available when they return.

Recommendations: Recommend file be concluded.

ER has provided a letter of confirmation (and follow up email) regarding the steps they will take to assure future compliance. See D-2

(b) (6), (b) (7)(C) Notification: (b) (6) has been notified of WHI efforts to make ER aware of FLSA NM provisions and educate staff.

Information for F-239 Letter: None issued for FLSA NM investigations.

Publications: FLSA, NM Fact Sheet, NM Powerpoint, FLSA HRG.

Further correspondence should be sent to:

Via Christi Health, Inc
Attn: Bobbie Johnson, Counsel
929 N St Francis
Wichita, KS 67214

(b) (6), (b) (7)(C) WHI
11/24/172

Via Christi Health, Inc 316-259-4720 (Yardley cell)

A subsidiary of Ascension Health d/b/a Via Christi Hospitals Wichita, Inc 929 N St Francis Wichita, KS 67214	316-858-4925 (Johnson office) Fed ID#: 27-1965272 DUNS: 056577646 CAGE: 5ZA47
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Reason for Investigation. This investigation was initiated (b) (7)(E) .

Coverage. Subject is engaged in the operation of three separate hospital campuses in Wichita, KS. Two are acute care facilities.

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MODO Information: The STL DO is the MODO office. (b) (7)(E)

Contingent Workers: Not examined.

16(b) Actions : None related to Nursing Mothers.

Exemptions.

7(r)(3) – Inapplicable. ER does not meet the “hardship” clause, as they have substantially more than 50 employees and they readily have rooms available for use.

Section 7 – Applicable. Employees who are 541 exempt would be exempt from Section 7(r) of the Act.

Status of Compliance.

(b) (6), (b) (7)(C) Information: This investigation was initiated as a result of (b) (7)(E) (b) (6), (b) (7)(C) that as a nursing mother within 1 year of the birth of her child, (b) (6), (b) (7)(C) was entitled to protections of Section 7(r) but was **not**:

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It would appear that the ER's supervisor (and assumed that other supervisors) do not have a working knowledge of the FLSA NM, as ER confirmed that no training has been conducted on the topic.

No specific violations could be identified.

Section 11. No violations disclosed. There is no recordkeeping component to Section 7(r). ER will be keeping track of those needing lactation rooms or suitable rooms for expressing breast milk.

Section 12. No violations disclosed.

Disposition. At the time of the initial conference, WHI (b) (6), (b) (7)(C) met with Bobbie Johnson (in house counsel), Marlene Yardley (HR associate) and Kristine Langrehr, Benefits Coordinator. All expressed a basic knowledge of the FLSA NM, and Johnson had pulled copies of the WHD FS, the WHD FAQ, and the WHD powerpoint from the WHD website.

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To assure future compliance, the ER has agreed to:

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- Distribute same in the future to all taking pregnancy leave (whether FMLA or not).
- Distribute “nursing mother cards” to these same women, as well as have a supply available in the lactation rooms. A supply of 30 cards was provided.
- Distribute the lactation rooms about the Via Christi campus, allowing less walk time from various sites within the facility.
- Have those expressing breast milk identify what unit/location they are using for the purposes of expressing breast milk (if not the lactation room) and have Via Christi staff verify that the location meets the requirements of 7(r).
- Assure that similar policies, and distribution of lactation rooms, is present at other Via Christi campuses across Wichita.
- Assure that all supervisory staff is trained, via webinar or staff training, of FLSA NM provisions. ER plans to incorporate the FLSA NM fact sheet and/or powerpoint into their training, which will be held in December and January. Similar training will be available on line at any time, and will be given at future dates (for new hires or promoted individuals).
- Assure that there is greater employee awareness of the FLSA NM provisions by distribution

of the FS and encouragement of discussions between supervisor and employees BEFORE they return from maternity leave so that a suitable lactation room is available when they return.

Recommendations: Recommend file be concluded.

ER will be providing a letter of confirmation regarding the steps they will take to assure future compliance.

(b) (6), (b) (7)(C) Notification: (b) (6) has been notified of WHI efforts to make ER aware of FLSA NM provisions and educate staff.

Information for F-239 Letter: None issued for FLSA NM investigations.

Publications: FLSA, NM Fact Sheet, NM Powerpoint, FLSA HRG.

Further correspondence should be sent to:

Via Christi Health, Inc
Attn: Bobbie Johnson, Counsel
929 N St Francis
Wichita, KS 67214

(b) (6), (b) (7)(C), WHI
11/2/17

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1835445 Originating District: Minneapolis MN District Office
Local Filing Number: 2018-250-10051 Investigating District: Minneapolis MN District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 10/13/2017
Assignment Date: 11/06/2017

Employer Information

Trade Name: Little Acorns Learning Child Care Legal Name: Little Acorns Child Care, Inc.
Address: 1865 W Wayzata Blvd EIN: 41-1893015
County: Hennepin
NAICS Code: 624410
Long Lake, MN55356 No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 11/09/2015 BNPI:
To: 11/07/2017 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Full Investigation Future Compliance Agreed: ☒
Compliance Status: Compliance (no violations found) Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: 01/22/2018
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSA Totals:	7	7	\$1,486.55	\$1,486.55	\$0.00	\$0.00	

Total Violations Under FLSA: 8 \$0.00

WHISARD Compliance Action Report

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	7	Unduplicated Employees Agreed:	7
Total Amount BWs Computed:	\$1,486.55	Total Amount BWs Agreed:	\$1,486.55
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

50 Hrs. 3(s)(1)(b)Cov. ER. (b)(7) based re 7(r) Nursing mom & OT: Sec.6 no Vios. Sec. 7 Vios disclosed due to comp time: BW to 7 EE's: \$1,486.55. Sec. 7(r): No vios. Sec. 11 Vios: RK of Hrs.Wkd. Sec. 12 No vios. FC on 01/16/2018 with Smale/Owner+Heins+Rouckert. ER. ATFC and AGTP. (b)(7) informed on 01/16/18. Pubs. HRG, FS#28D, 44, 77, 516, 778, 785. Rec: Close (b)(7)(E)

WHI Signature: _____ Date: 01/16/2018

Reviewed By: _____ Date: _____

FLSA NARRATIVE

Company Name: Little Acorns Child Care Legal Name: Little Acorns Child Care, Inc.	Address: 1865 W. Wayzata Blvd. Long Lake, MN 55356 Main Office Address: Same
Tax ID # 41-1893015 Investigative Period: 11/09/2015 through 11/07/2017	Organization Type <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Partnership <input checked="" type="checkbox"/> Corporation <input type="checkbox"/> Limited Liability Company
<u>Corporate Officer</u> <u>Ownership</u> Mary Smale (b) (4) owner Responsible Person The persons responsible for wage policies and practices are the owner, Mary Smale, and the schools' Office Manager, JoNelle Heins. In conjunction they are responsible for the hiring and firing of all personnel, including minors, as well as setting the personnel's work schedules. (See Exhibit C-1).	Local File # 2018-250-10051 WHERARD I.D. # 1835445 MODO: Not Applicable.

COVERAGE

The subject firm was established in 2003 by the current owner, Mary Smale. The enterprise is engaged in providing child care services to children ranging in ages from six months to school age children. These services are provided through a team of (b) (4) employees whose positions range from Classroom Aides/Teacher Assistant Teachers, Teachers, Office Manager and Program Director. (See Exhibits C).

The volume of the business is seasonally driven; however, the employer is engaged in business year round. The busiest season is during the summer months working parents of school age children enroll them in the center. During these months the number of employees at the establishment may reach up to (b) (4) employees and these employees may work in full or part-time capacities. The employees' shifts are staggered in order to accommodate children being dropped off early. The establishment is open from 6:30 a.m. to 6:30 p.m.

The daily oversight and management of the business is performed by JoNell Harris, Office Manager and Melisa Smale, owner. They are responsible for wage and hour policies which include establishing wages, setting work schedules, and the hiring and firing of all personnel. The Employer estimates that during the investigative period she has employed approximately (b) (4) employees.

<p>203(s)(1)(b) Covered Employer.</p> <p>ADV was not above \$500,000 for any of the investigative years: 2016: (b) (4) 2015: (b) (4)</p> <p>The Employer is engaged in interstate commerce. She receives Tissues from Kikland produced in Seattle, WA. Her employees handle goods and materials that have been moved in or produced for commerce. (See Exhibits C).</p>	<p>Branches:</p> <p>Investigation did not disclose branches.</p>
<p>Investigation Type:</p> <p><input checked="" type="checkbox"/> Full <input type="checkbox"/> Limited <input type="checkbox"/> Office Audit <input type="checkbox"/> Self Audit</p>	<p>If limited, limited to:</p> <p>NOT APPLICABLE</p>

EXEMPTIONS

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<p><u> X </u> Applicable</p>	<p><u>541.101 Owner</u></p> <p>Mary Smale, Owner.</p> <p><u>541.102 Management</u></p> <p>(b) (6), (b) (7)(C) Office Manager, (b) (6), (b) (7)(C) /year. This employee directly oversees the administrative side of the business. Should the need arise, (b) (6), (b) (7)(C) has the ability to hire and fire independently, however as general practice this is done in collaboration with the owner, Mary Smale. Further, the employee may schedule employees and in conjunction with program director, may direct employees' work as necessary. Also, this employee has financial discretion over the business inasmuch as (b) (6), (b) (7)(C) sole signature is required to engage the employer's business into contracts with vendors, and endorse the payroll. Moreover, the employee has the ability to close or suspend the business during inclement weather. This employee served as the sole Employer representative during the course of the investigation.</p> <p>(b) (6), (b) (7)(C) Curriculum Director, (b) (6), (b) (7)(C) /year. This employee normally and independently oversees the work performance of up to 17 employees which includes teachers, teacher's Assistants and Aides. Collaboratively with manager and owner, she can hire or fire.</p> <p>(b) (6), (b) (7)(C) can independently decide the business needs and effect autonomous disciplinary decisions, such as suspension, and assign training. In conjunction with owner the employee has the ability to impact employees' wages in the form of raises.</p> <p>(See Exhibits B-1 and B-4)</p>
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<input checked="" type="checkbox"/> Not Applicable <input checked="" type="checkbox"/> Undetermined	Not Applicable Not Applicable
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Prior Hertory? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
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STATUS OF COMPLIANCE

Section 6	No minimum wage violations were disclosed. The lowest wage paid to employees was (b) (4)/hr. (See Exhibit A-1).
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Section 7	<p>Overtime violations were disclosed. The investigation disclosed that employees were not paid overtime for hours worked over 40 in a consecutive 7 day period.</p> <p>During the initial conference the Employer signed a statement where she disclosed that employees do not work overtime because they work a regimented 40 hours per week in staggered work shifts that allow them to be open to the public during their business hours of 6:30 a.m. to 6:30 p.m.</p> <p>However, the investigation disclosed that the employees in fact work over 40 hours per week during the days they are required to come in to complete State of Minnesota required training. Without fulfilling this requirement, the Employer would not be able to operate the business. (See Exhibits B).</p> <p>The employees were not monetarily paid the training time; instead, they were compensated for the time through “Comp Time”. The Employer stated and investigation disclosed that when the time was “cashed out” out by employees it was to the equivalent of time and half of their regular rate.</p> <p>The Employer explained that she considered this training time non-worked hours because she believed the employees needed the training in order to maintain their positions. The investigation disclosed that the method of reimbursement impacted 14 employees during the investigative period. Analysis of payroll demonstrated that all but 8 employees had outstanding balances and computations for these employees resulted in back wages due to 7 of them in the amount of \$1,297.69. (Computations for 2 of these 9 employees resulted in total wages that were de minimus). See Exhibits A-2).</p> <p>Per ADD Tout, LLLD's were not incorporated as part of the amounts due to employees.</p>
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<p>Section 7(r) Break Time For Nursing Mothers Provision</p>	<p>The investigation disclosed that the Employer did not employ 50 employees during the investigative period.</p> <p>The investigation disclosed that there were three nursing mothers since the business opened and that two of these employees were largely accommodated during the investigative period in compliance with this provision. With the exception of one instance in which one of these two employees was not immediately accommodated, the employer accommodated the nursing mothers by providing two private locations for the use of these employees. The Employer paid these employees for these break times which took up to 30 minutes twice a day, depending on the nursing mother's request.</p> <p>The investigation disclosed that the one instance when the employee was not immediately accommodated was due to a shortage of employee coverage; the employer is a child care provider and is required to maintain an adult/child ratio by Minnesota State Standards. The investigation disclosed that in this iteration were the employee was not immediately accommodated the span of delay was approximate 15 minutes.</p> <p>The two employees covered during the investigative period, as well as the one outside the investigative period were interviewed. One of these employees is (b) (6), (b) (7)(C), (b) (6), (b) (7)(C) who on interview admits that during (b) (6), (b) (7)(C) tenure the Employer accommodated (b) (6), (b) (7)(C) breaks, with the exception of the week prior to last day of employment. (b) (6), (b) (7)(C) also (b) (7)(E) (b) (6), (b) (7)(C) employer did not provide a private space for (b) (6), (b) (7)(C) to pump. (b) (6), (b) (7)(C) stated that another nursing mother, (b) (6), (b) (7)(C) would attest to the restriction (b) (6), (b) (7)(C) had endured and that it had been (b) (6), (b) (7)(C) who explained the procedures to (b) (6), (b) (7)(C)</p> <p>The interview with (b) (6), (b) (7)(C) states that (b) (6), (b) (7)(C) did not experience the restriction (b) (7)(E) (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) believes that this was because (b) (6), (b) (7)(C) understood that coverage had to be addressed, and for that reason (b) (6), (b) (7)(C) gave the employer a daily notice first thing upon morning arrival of (b) (6), (b) (7)(C) desired break times for the day, thus ensuring Employer could relieved without delay. (b) (6), (b) (7)(C) believes that (b) (6), (b) (7)(C) only experienced this toward</p>
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the end of (b) (6), (b) (7)(C) employment and that the delay might have been due to shortage of staff on that particular day.

The third employee interviewed, (b) (6), (b) (7)(C), had been with employer since 2008 and had been accommodated a nursing break at that time. (b) (6), (b) (7)(C) stated that at the time the employer operated at a different location and had recently moved to the current establishment. During the tour of the establishment both (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) remarked on the availability of a conference room and a lunch room because they were nursing mothers.

The physical tour of the establishment disclosed that both the conference room and the lunch room lock from the inside, and that both rooms are on the second floor of the building, where there are also two offices. The classrooms, play and sleep areas are all located on the first floor of the building, the stairs are fitted with a child size gate, it is unlikely that children would have frequent these areas as alleged by (b) (6), (b) (7)(C)

The investigation also disclosed that (b) (6), (b) (7)(C) had a child enrolled in employer's day care, and the child was being breastfed (b) (6), (b) (7)(C) who also took a pumping break. (b) (6), (b) (7)(C) used the conference for breastfeeding, while using the lunch room for milk/pumping. The lunch room has a sink which was used for rinsing the equipment.

The Employer alleged that the nursing mother's provision was incorporated in the Employee handbook, however interviews cannot support that the clause was there before the Initial Conference.
(See Exhibits B-2, B-3 and B-4).

Section 11	Recordkeeping violations were disclosed: Employer failed to keep accurate record of hours worked.
Section 12	<p>No child labor violations were disclosed: The Employer did hire a minor during the investigative period.</p> <p>The minor, (b) (6), (b) (7)(C) [REDACTED]</p> <p>[REDACTED] The minor was 16 years old at the time of hire and has worked as a Classroom Aide, helping to clean up classrooms and distribute snacks. (See Exhibit D-1 and B-6).</p>

<p>(b) (7)(E)</p>	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>**The Employer kept the records were of earned comped hours scattered in various filed depending on the basis on the reason they were accrued, for example, OSHA training would be under a separate file than Teacher Conferences, or Teacher Training, etc., thereby making the process of consolidation and (b) (7)(E) of hours paid involved and time consuming.</p>
<p>(b) (7)(E)</p>	<p>The investigation (b) (7)(E) (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) was nursing mother whose employer did not allow breaks as needed to express milk, and that (b) (6), (b) (7)(C) employer only provided a conference room when it was available and when not, (b) (6), (b) (7)(C) was forced to use a break room where children could see (b) (6), (b) (7)(C) stated that the affected another co-worker who was also a nursing mother, (b) (6), (b) (7)(C)</p> <p>(b) (6), (b) (7)(C) also (b) (7)(E) time spent in training and a meeting was compensated to all employees in the form of comp time.</p>

The investigation did not disclose a violation in regards to Section 7(r), Break Time For Nursing Mothers Provision (see Status of Compliance section on the narrative).

(b) (7)(E) (see Section 7, Status of Compliance section of the narrative. The investigation disclosed that at the time of (b) (6), (b) (7)(C) separation, (b) (6), (b) (7)(C) had received all (b) (6), (b) (7)(C) comp time at time and half of (b) (6), (b) (7)(C) regular rate (See Exhibits D-4).

(b) (6), (b) (7)(C) was informed of the results on 01/16/2017.

DISPOSITION

The final conference was held on 01/16/2017 at the employer's establishment. Present at the meeting were Mary Smale, owner, JoNelle Heins, Office Manager, and WHI (b) (6), (b) (7)(C)

WHI (b) (6), (b) (7)(C) reviewed the major sections of the FLSA with the Employer, including the Department of Labor's authority under the FLSA, coverage as it pertained to employer, minimum wage and overtime requirements, including 541 exemptions, recordkeeping requirement, and child labor regulations.

WHI (b) (6), (b) (7)(C) also addressed the specific findings disclosed during the course of the investigation, as follows:

Minimum wage: WHI (b) (6), (b) (7)(C) advised the Employer that no minimum wage violations were disclosed during investigative period. WHI (b) (6), (b) (7)(C) reminded the Employee of (b) (6), (b) (7)(C) obligation to maintain (b) (6), (b) (7)(C) informed in the event that the current minimum wage changed in the future. To the effect, WHI (b) (6), (b) (7)(C) reiterated the WHD website, as well as the public line where employer could call to obtain guidance to continue to be in compliance.

Employer, Mary Smale stated that she understood and agreed to future compliance.

Record Keeping: WHI (b) (6), (b) (7)(C) informed the employer that training in to meet State Requirements in order for the business to continue to operate were hours worked, and they could not be segregated from records of hours worked for purposes of compliance with FLSA. Employer was reminded of the criteria explained to (b) (6), (b) (7)(C) during the initial conference that exempts training as hours worked: (1) it occurs outside normal scheduled hours of work; (2) it is completely voluntary; (3) it is not job-related (unless the employee attends an independent school or college on her/her own initiative outside work hours); and, (4) no other work is performed during the period. The Employer was informed that the time spent attending training that is required by the state for day care center licensing is working time for which employees must be compensated given that the business would otherwise not be able to operate, were it not part of the requirement in order for the business to operate. Consequently this time was to be recorded as hours worked.

Overtime: The Employer, Mary Smale was reminded that during initial conference she stated that none of her employees ever worked more than 40 hours in a week and that the business was staffed from 6:30 a.m. to 6:30 p.m. through employee's staggered shifts and that these shifts included the employees meal breaks for

which they were paid, because they were expected to work through them. The employer stated that the policy was to pay overtime for hours over 40 but that she could not recall the last time anyone had worked it. At the time of initial conference employer had also disclosed to requiring employees to complete in-house training for which employees did not receive pay, but instead were given “comp” time.

WHI (b) (6), (b) (7)(C) reminded the Employer, Mary Smale, that during the initial conference she had been informed that this practice was in violation of FLSA requirements. The Employer stated that she had halted the practice immediately and stated to WHI that her staff was very unhappy with this change.

WHI stated that review of the records, disclosed that that investigation disclosed that impacted 9 employees during the investigative period and total back wages resulted in the amount of \$1,297.69 due to 7 employees (2 computations resulted in total wages that were de minimus).

Employer, Mary Smale agreed to future compliance and agreed to pay in full by 01/23/2017, as stated on WH-56. Employer was also given wage disbursement instructions and WH-58's to present to employees receiving back wages.

Section 7(r) Break Time For Nursing Mothers Provision: A discussion was held regarding the provisions including providing a reasonable break time and a place free from public view. The Employer stated that she had accommodated both private places and reasonable break times to all of the mothers who requested the accommodation, but being a small employer there were sometimes difficulties accommodating last minute requests given that a ratio of adults to children had to be maintained due to State requirements. The employer disclosed that she was aware of only one instance in which there had been a problem and that this particular employee's demands had more to do with issues outside accommodation; the employee had given her two weeks' notice at the time and was not particularly sensitive to her business needs.

WHI (b) (6), (b) (7)(C) discussed all other criteria contained in Section 7(r) and Employer stated that she understood and agreed to future compliance.

Exemptions: The Employer, Mary Smale was informed that the 541.101, Owner Exemption applied to her. The Employer, Mary Smale was also informed that the 541.102 Management Exemption applied to Melissa Rueckert, Curriculum Director, and JoNelle Heins, General Manager, as discussed in the Exemptions section

of the Narrative.

WHI (b) (6), (b) (7)(C) reminded the Employer to carefully evaluate the employees' positions in the context of the criteria for Exemptions before making any changes to ensure future compliance.

Employer, Mary Smale stated that she understood and agreed to future compliance.

Child Labor: The Employer was informed that the investigation did not disclose child labor violations although she employed a minor during the investigative period. The minor in case was 16 years of age old when she was first employed and worked in the as a classroom helper. Nevertheless, the employer was informed of the Child Labor requirements including Reg. 3 requirements and Hazardous Orders.

Additionally, WHI informed the Employer, Mary Smale of her obligation to be in compliance with all the laws enforced by the Wage and Hour Division and to that extent emphasized the Agency's website and public line, in addition to reviewing with her the publications given to her, same that are listed in the following section of the narrative.

Employer, Mary Smale was also informed of the agency's discretion to conduct reinvestigations, as well as the possibility of Civil Money Penalties.

Employers, Mary Smale stated that she understood and agreed to future compliance.

Recommendations:

WHI (b) (6), (b) (7)(C) recommends that the case be administratively closed (b) (7)(E)

Receipt forms? Yes Payments? N/A (If yes, attach schedule) Waiver? N/A (If yes, attach copy)

Publications provided:

Handy Reference Guide to the Fair Labor Standards Act.

Fact Sheet # 14 Coverage under FLSA

Fact Sheet # 21 Recordkeeping Requirements under FLSA

Fact Sheet # 22 Hours Worked under the FLSA

Fact Sheet # 23 Overtime Pay Requirements of the FLSA

Fact Sheet # 28D Employer Notification Requirement under the FMLA

Fact Sheet # 44 Visit to Employers

FLSA Minimum Wage Poster

WH-1261 Records to be Kept by Employer (Reg. 516)

WH-1262 Interpretative Bulletin on Overtime Compensation (Reg. 778)

WH-1281 Regulations Part 541 Exemptions for

Executive/Admin/Prof/Sales/Computer EE's (Reg. 541)

WH-1282 Handy Reference Guide to the Fair Labor Standards Act

WH-1282 Handy Reference Guide to the Fair Labor Standards Act (Spanish)

WH-1312 Hours Worked (29 CFR 785)

WH-1318 FLSA

WH-1325 Overtime Compensation Under the FLSA

WH-1330 Youth Employment Provisions of FLSA

WH-1415 Child Labor Violations – CMP (Reg. 579)

WH-1497 Work Hours Recordkeeper

Little Acorns Learning Child Care Case ID: 1835445

Contact: Mary Smale	Phone: (952)475-0828
Investigator:	Date:

WHISARD Compliance Action Report

U.S. Department of Labor Wage and Hour Division

Case ID: 1838302 Originating District: Des Moines IA District Office
Local Filing Number: 2018-180-15623 Investigating District: Des Moines IA District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 11/09/2017
Assignment Date: 11/09/2017

Employer Information

Trade Name: Imagine the Possibilities Legal Name: Imagine the Possibilities, Inc.
Address: 1710 E. Maple St EIN: 23-7224698
Maquoketa, IA52060 County: Jackson
NAICS Code: 09690
No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 11/17/2015 BNPI:
To: 11/15/2017 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Full Investigation Future Compliance Agreed: ☒
Compliance Status: Compliance (no violations found) Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

25.5 hrs; ltd FLSNM (b) (7)(E) case; ent cov; FC 12/12/17 w/Shara Muller, Asso Dir Human Resources; no vio; ER ATFC; PUBS: FLSA HRG, 516, 541, 778, 785, CL-101, Fact Sheets 17A, 21, 22, 23, 44, and posters; rec admin closure.

WHI Signature: _____ Date: 12/14/2017

Reviewed By: _____ Date: _____

FLSNM NARRATIVE REPORT
2018-180-15623
Case ID: 1838302
FEIN# 23-7224698

Imagine the Possibilities, Inc.
f/k/a DAC, Inc.
1710 E Maple Street
Maquoketa, IA 52060

Contact: Shara Muller, Associate Director of Human Resources 563.652.5252 x1116

COVERAGE

ENTERPRISE COVERAGE

Subject firm is a 501(c)(3) corporation which operates as a provider of residential and vocational services for individuals with disabilities. Subject firm provides services for individuals in multiple cities throughout Iowa including Maquoketa, DeWitt, Strawberry Point, Guttenberg, Elkader, Edgewood, Bellevue, Oskaloosa, Preston, Creston, Corning, Dubuque, Garnavillo, Asbury and Clinton.

The corporate administration office is located at 1710 E Maple Street, Maquoketa, IA 52060 with multiple administrative offices throughout the State of Iowa. The non-profit corporation has an ADV of (b) (3) (B) for 2016; (b) (4) for 2015 and (b) (4) for 2014. (Exhibits C-2 through C-4) Subject firm uses a fiscal year of July 1st through June 30. Todd Seiffert is listed as the Executive Director.

FLSA Section 203(s)(1) enterprise coverage for the investigative period of November 17, 2015 through November 15, 2017.

FLSNM Coverage: Employees are entitled to protection under Section 7(r) of the FLSA when subject firm employees at least 50 or more employees. There is coverage under FLSNM as this subject firm has a total of (b) (4) employees throughout eastern Iowa. (Exhibit C-1(b))

Period of Investigation

11/17/2015 through 11/15/2017

HISTORY There is no history for Imagine the Possibilities, Inc. or DAC, Inc.

MODO

Imagine the Possibilities, Inc. has a main office with multiple administrative offices and work locations throughout Iowa. (b) (7)(E) (Exhibit D-1 through D-3)

(b) (7)(E)

EXEMPTIONS None applied or misapplied within the limited scope of the investigation.

Status of Compliance:

(b) (6), (b) (7)(C) (b) (7)(E) (b) (6), (b) (7)(C) was told to use the bathroom to express breast milk. (b) (6), (b) (7)(C) further (b) (7)(E) (b) (6), (b) (7)(C) was then given a room which was not entirely secure from others entering while expressing milk. (b) (6), (b) (7)(C) has acknowledged (b) (6), (b) (7)(C) has been given a room which is secure. (Exhibit B-1)

(b) (6), (b) (7)(C) also (b) (7)(E) (b) (6), (b) (7)(C) feels (b) (6), (b) (7)(C) is being treated differently than other employees as (b) (6), (b) (7)(C) was given two written warnings for violating company policy: one for use of personal cell phone while working (Exhibit E-17) and the other for not calling in when absent for a worker's compensation doctor's appointment. (b) (6), (b) (7)(C) acknowledged that these are against company policy however, (b) (6), (b) (7)(C) does not know if anyone else has been given written warnings.

(b) (6), (b) (7)(C) further (b) (7)(E) (b) (6), (b) (7)(C) nearly got a breast infection due to (b) (6), (b) (7)(C) employers making (b) (6), (b) (7)(C) call a supervisor prior to going on break. WHI (b) (6), (b) (7)(C) explained to (b) (6), (b) (7)(C) that since (b) (6), (b) (7)(C) cares for adults with disabilities this requires more responsibility than a person who sits at a desk all day. (b) (6), (b) (7)(C) agreed and stated (b) (6), (b) (7)(C) cannot leave the client's alone to go on break.

(b) (7)(E) (b) (6), (b) (7)(C) is allowed to take as many breaks a day as (b) (6), (b) (7)(C) needs as long as (b) (6), (b) (7)(C) records the time of the breaks and notifies staff so they can replace (b) (6), (b) (7)(C). Subject firm must have sufficient staff to cover the clients at all times.

Section 6 Minimum Wage: No violations within the limits of this investigation.

Section 7 Overtime: No violations within the limits of this investigation.

Section 11 Recordkeeping: No violations within the limits of this investigation.

Section 12 Child Labor: No violations within the limits of this investigation.

Disposition: On November 28, 2017, an initial conference was held at the establishment with Shara Muller, Associate Director of Human Resources, Jeffrey Morris, Chief Human Resource Officer and WHI (b) (6), (b) (7)(C). Compliance with 7(r) of the Fair Labor Standards Act was discussed. A company handbook was provided and is shown in part at Exhibit E-1 through E-9. Shara Muller stated employees are allowed two paid 15 minute breaks during their 8 hour shift as well as an unpaid lunch break. Management reported that (b) (6), (b) (7)(C) was taking an hour for (b) (6), (b) (7)(C) breaks. (b) (6), (b) (7)(C) was then asked to write down the time (b) (6), (b) (7)(C) began (b) (6), (b) (7)(C) break and the time (b) (6), (b) (7)(C) ended it. Also, due to staffing requirements, Shara Muller explained that (b) (6), (b) (7)(C) was asked to call a supervisor to let them know when (b) (6), (b) (7)(C) was going on breaks. (b) (6), (b) (7)(C) has been given an office room at the North House in DeWitt, Iowa to use as (b) (6), (b) (7)(C) break room for expressing breast milk.

(b) (6), (b) (7)(C) also feels (b) (6), (b) (7)(C) has been harassed because the employer has asked (b) (6), (b) (7)(C) not to share that (b) (6), (b) (7)(C) is pumping breast milk. Shara Muller stated that (b) (6), (b) (7)(C) does not use discretion when telling personal details of (b) (6), (b) (7)(C) life and shares detailed information that it not appropriate for client's as they do not understand. Also, associates who work with (b) (6), (b) (7)(C) have told management they do not want to hear (b) (6), (b) (7)(C) personal details. Shara Muller stated there are two other employees who are also expressing breast milk and they are not having problems.

Shara Muller also explained that (b) (6), (b) (7)(C) is allowed to take as many breaks as (b) (6), (b) (7)(C) needs to express breast milk. (b) (6), (b) (7)(C) is paid for two 15 minute breaks and the remainder is tracked and deducted from (b) (6), (b) (7)(C) paycheck. Shara also stated that the additional break time taken is automatically counted as FMLA protected time as a company courtesy without paperwork being filled out for it.

A final conference was held via telephone on December 12, 2017 with Shara Muller, Associate Director of Human Resources. It was advised that all managers be trained on 7(r) requirements of the Fair Labor Standards Act for Nursing Mothers. Shara Muller agreed to future compliance and to train staff as necessary using WHD training information. WHI (b) (6), (b) (7)(C) toured the place of employment at DeWitt, Iowa and visited the room used for (b) (6), (b) (7)(C) lactation. The room was an office with a desk, comfortable chair and desk lamp. The room locked and

had a do not disturb sign on the door.

Ms. Muller acknowledged that she understood the provision of the FLSANM and stated she would call Wage Hour if he had any questions in the future. WHI (b) (6), (b) (7)(C) provided Ms. Muller with links on Wage Hour website for FLSNM presentations and training.

WHI (b) (6), (b) (7)(C) notified (b) (6), (b) (7)(C) of the findings via telephone on December 12, 2017.

Publications

FLSA HRG, 516, 541, 778, 785, CL-101, Fact Sheets 17A, 21, 22, 23, 44, and posters were provided and discussed.

I recommend the case be administratively closed.

(b) (6), (b) (7)(C)

WHI

December 13, 2017

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1840820 Originating District: Minneapolis MN District Office
Local Filing Number: 2018-250-10129 Investigating District: Minneapolis MN District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 12/08/2017
Assignment Date: 12/11/2017

Employer Information

Trade Name: Gap Kids
Address: 2500 N. Mayfair Road

Wauwatosa, WI53226

Legal Name: Gap Inc.
EIN: 94-7691231
County: Milwaukee
NAICS Code: 448130
No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 06/01/2017 BNPI: 1
To: 12/12/2017 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

8.25 hours FLSNM Violation employee was not provided a space other than a bathroom to use while expressing milk FC held on 12/12/2017 with General Managers Amy Keecker and Ashley Nabbefeld at the establishment. There was an ATC. PUBS: HRG, WHDFS 73 Recom: This case to be closed administratively.

WHI Signature: _____ Date: 12/12/2017

Reviewed By: _____ Date: _____

Gap Kids Case ID: 1840820

Legal Name: Gap Inc. **Whisard ID:** 1840820
F-EIN: 94-1697231

Address:
2500 N Mayfair Road
Wauwatosa, WI 53226

Representative:
Ashley Nebbefeld-General Manager
Amy Keeker-General Manager

Contact Information:
2500 N Mayfair road
Wauwatosa, WI 53226
Phone: 262-498-4104
Email: Ashley_Nabbefeld@stores.gap.com

Corporate Office:
2 Folsom Street
San Francisco, California 94105

FLSA

Coverage

Gap Kids is a retail store that sells infant to toddler sized clothing to the general public. The subject firm in question Gap Kids is located in Wauwatosa, Wisconsin. This location has approximately twenty employees working as sales associates, stockers, and managers. With over (b) (4) in the immediate area.

The corporate office is located in San, Francisco. The company operates five primary divisions: Gap, Banana Republic, Old Navy, Intermix, and Athleta. There are approximately a total of 1,700 Gap corporate and franchised stores worldwide. The 3 (d) employers are the corporate executive members.

See C-1 for annual dollar volume information.

Period of Investigation: 06/01/2015-12/12/2017

MODQ: This is a multi-unit establishment located in Waukesha, WI. The Milwaukee, AO is responsible for this establishment. (b) (7)(E)

Exemptions

No exemption claimed for (b) (6), (b) (7)(C) is an hourly employee that is eligible for overtime.

Status of Compliance

History: Case# 1116487 (b) (7)(E) on 1/22/2001 for Sales Person due 164.80. Manager Desa Stojanzoic ATC/RTP.

Reason for Investigation: This is a limited investigation (b) (7)(E) (b) (6), (b) (7)(C). Employee (b) (7)(E) store did not provide a space to nurse that was available nor free from view and that was not a bathroom. (b) (7)(E) The employee was told that the bathroom was an alternative option and not available when (b) (6), needed it.

Sec 6: Minimum wage not investigated.

Sec 7: Overtime not investigated.

Nursing Mothers

A violation was found for Sales Associate (b) (6), (b) (7)(C). The General Manager acknowledged that a space was not always available for use that was not a bathroom or space that was shielded from view.

Sec 11: Record keeping not investigated.

Sec 12: No violations found not investigated.

Disposition

A final conference was held on 12/12/2017 with WHI (b) (6), (b) (7)(C) and General Managers: Amy Keeker and Ashley Nebbefield.

The violation was discussed with Ms. Keeker the general Manager for Gap Kids. Ms. Keeker disclosed that there was a time when (b) (6), (b) (7)(C) did not have a space available that was shielded from view. Initially, when the employee returned from maternity leave in (b) (6), (b) (7)(C) there was a space provided for the employee. During October that space was filled for storage and deemed unsafe by management. The employee was given the manager's office to use but it was disclosed that there was video surveillance being done and was not shielded from view. At that time the manager was told by security that the employee cannot be in that office alone without video surveillance. The employee was given the option of the family restroom. The general manager Amy said that she would ensure that there was a space available until the birthday of the child on January 15th, 2018. She said she was unaware that the bathroom was not suitable place for the employee to use. She said that would no longer be considered an option and that she would make sure there was a space available for the employee.

The employer agreed to comply.

No back wages assessed.

(b) (6), (b) (7)(C) informed 12/12/2017.

Pubs Given:

HRG, whdfs73

Recommendations:

I recommend this case to be closed administratively.

(b) (6), (b) (7)(C)

WHI

12/12/2017

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1841045 Originating District: Chicago IL District Office
Local Filing Number: 2018-149-09450 Investigating District: Chicago IL District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 12/12/2017
Assignment Date: 12/12/2017

Employer Information

Trade Name: United Health Care Legal Name: United Health Group Inc.
Address: 2655 Warrenville Rd. EIN: 41-1321939
County: Du Page
NAICS Code: 52411
Downers Grove, IL 60515 No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 02/07/2016 BNPI:
To: 02/06/2018 Reinvestigation: ☒
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

FLSNM Case Cov. Sec 203(s)(1). Exept. Sec 213(a)(1). No investi (b) (6), claimed Se. 207(r0(1) viol. Sec 206. No viol Sec 207.No Viol. Sec 207(r)(1) vio. Sec 211. No viol Sec 212. No vio. DISP. FC w Tom Russell ATC, Give. HRG, FS44. FS 73 Rec. Adm close (b) (7)(F)

WHI Signature: _____ Date: 02/15/2018

Reviewed By: _____ Date: _____

United Health Care Case ID: 1841045

Case ID: 1841045

Case File# 2018-149-09450

United Health Care

Legal Name: United Health Group, Inc.

2655 Warrenville Rd.

Downers Grove, IL 60515

Corporate Office:

United Health Group

9900 Bren Road E, MN008-W210

Minnetonka, MN 55343

Telephone: 770-623-8985

Facsimile: 952-932-7793

EIN: 41-1321939

COVERAGE

203(s)1(A)(i)&(ii): Since the dollar volume exceeded 500,000 dollars in the two fiscal years, at least 2 full time workers are employed and employees handle goods that have moved in commerce, enterprise coverage has been established for the investigative period. See information below regarding evidence that

supports this basis for coverage as well as other relevant background data.

Period of Investigation: 02/07/16-02/06/18

MODO: Minneapolis, MN District Office is MODO for this establishment. (b) (7)(E)

Employer has multiple locations all over the US and abroad.

Prior History: Subject firm was previously investigated:

1. Whisard case ID: 1385563 registered in 2004. FMLA (b) (7)(E)
2. Whisard case ID: 1021642 registered in 1999. FMLA (b) (7)(E)
3. Whisard case ID: 387210 registered in 1998. FMLA (b) (7)(E)
4. Whisard case ID: 387202 registered in 1998. FMLA (b) (7)(E)

Nature of Business: The subject firm is a health insurance company providing dental, medical and vision insurance benefits. The investigated establishment in Downers Grove is a pharmacy call center in Illinois.

Annual Dollar Volume: According to the Employer statement the ADV for the calendar years exceeded (b) (7)(E) during the investigative period (See Exhibit C-1).

Interstate Commerce: The investigated company has locations all over the US. The pharmacy call center employees work with customers from all US States.

Workforce: The Employer has around (b) (4) employees all over the US. The Call Center had an average workforce of approximately (b) (4) employees during the time of the investigation.

Business Structure: United Health Group is a publicly traded company. Human Resources Department is located in State of Texas and Minnesota.

Section 203(d) Employer: Tom Russell represented the Employer while dealing with US DOL Wage and Hour. He is an employer that meets the definition of Section 203(d). As a Director of Employee Relations

he is responsible for Company policies affecting the employees.

EXEMPTIONS: No exemptions were claimed or denied.

STATUS OF COMPLIANCE:

Reason for Investigation: The limited investigation was initiated (b) (7)(E) (b) (6), (b) (7) (b) (6), (b) (7) was a nursing mother and needed a private place to express breast milk for nursing child.

Section 206: No violations found. (See all B exhibits)

Section 207: No violations found. (See all B exhibits)

Review of available time and pay records of call center employees showed that Employer paid overtime premium for hours worked above 40 in a designated work week.

Section 207(r)(1): Violations found. The Employer failed to provide “a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk”.

Section 211: No Violations.

Section 212: There were no minors working for the Employer.

Section 216(e) & (WHISARD CMP calculation & Liquidated Damages:

Not applicable.

DISPOSITION

On February 6, 2018 an initial and final conference was held in Downers Grove location. Attending were Tom Russell (Director of Employee Relations for the Employer) and (b) (6), (b) (7)(C) (WHI). WHI

(b) (6), (b) (7)(C) discussed the applicable provisions of the ACT particularly Break Time for Nursing Mother regulations.

The Employer explained that all establishments have had “a mothers suite” for nursing mothers for the last decade (See Exhibit C-2). Establishment in Downers Grove moved to a new building approximately in November 2017. It was the Employer oversight that a mother suite did not guarantee privacy for nursing employees. As soon as the Employer found out about lack of privacy for nursing mothers, the Employer put locks on mothers suite and thus guaranteed required by law privacy. The Employer guarantees that nursing employees are given a break when needed to nurse (See Exhibit B-2). The Employer promised their future compliance with the law.

Recommendation: Recommend that the case be administratively.

(b) (6), (b) (7)(C) Notification: (b) (6), (b) (7)(C) was notified about investigative findings on 02/12/18. (b) (6), (b) (7)(C) is happy with investigative findings.

Publications Provided:

Handy Reference Guide to FLSA

Fact Sheet 44

Fact Sheet 73

(b) (6), (b) (7)(C)

Wage and Hour Investigator

02/15/2018

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1842120 Originating District: Grand Rapids MI District Office
 Local Filing Number: 2018-191-00969 Investigating District: Grand Rapids MI District Office
 WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
 Registration Date: 12/27/2017
 Assignment Date: 02/13/2018

Employer Information

Trade Name: McDonalds of Allegan

Address: 889 Marshall St.

Allegan, MI 49010

Legal Name: Milargo Six, Inc.

EIN: 85-0437543

County: Allegan

NAICS Code: 722211

No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 06/15/2017

To: 02/13/2018

Investigation Type: (b) (7)(E)

Investigation Tool: Full Investigation

Compliance Status: Agree to Comply

BNPI:

Reinvestigation: ☐

Recurring Violation: ☐

Future Compliance Agreed: ☒

Involved in AG: ☐

Recommended Action:

BWFS: ☐

CMP: ☐

Litigation: ☐

Civil Action: ☐

Criminal Action: ☐

Submit For Opinion: ☐

RO/NO Review: ☐

Follow Up Investigation: ☐

Other Action: ☐

Denial of Future Certificate: ☐

BW Payment Deadline:

Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

Total Violations Under FLSA:	1		\$0.00
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WHISARD Compliance Action Report

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	
Total Violations Under FLSNM:	2						\$0.00

FMLA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FMLA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	
Total Violations Under FMLA:	4						\$0.00

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

203s1a and FMLA- covered McDonalds Franchise part of enterprise of 10 locations. viol - insufficient break room&time provided for nursing mother, RK viol for failure to pay short breaks and FMLA policy violations. FC w/ ER/Dir of Ops, Jim Walendzik 2/13/18 at est in which he ATC with all in the future. no bws found due

WHI Signature: _____ Date: 03/07/2018

Reviewed By: _____ Date: _____

Narrative Report
Fair Labor Standards Act

Case ID: 1842120
Local Case: 2018-191-00969

Milagro Six Inc.
D/b/a McDonald's of Allegan
889 Marshall St., Allegan, MI 49010
PH: [\(269\) 673-6112](tel:2696736112)
FEIN: 85-0437543

Jim Walendzik, Director of Operations
312 Douglas Ave, Holland, MI 49423
T: 616-546-8794 / C: 616-560-3218
jwalendzik.milagrosix@gmail.com

Tony and Virginia Castillo, (b) (4) ownership each
312 Douglas Ave, Holland, MI 49423 (Headquarters POC)

Case Assignment Information: This case was assigned (b) (7)(E) (b) (6), (b) (7)(C) (b) (7)(E) violations of the nursing mother's provisions because the nursing room provided to (b) (6) had a large window, had a security camera that other employees had access to, and did not have a lock thus other employees and managers would walk in while (b) (6) was nursing. There was also evidence from employee interviews and from (b) (6), (b) (7)(C) confirming harassment from managers because (b) (6) was nursing at work. (b) (7)(E) (b) (6) however could not remedy the situation for (b) (6), (b) (7)(C) because (b) (6) child turned one (b) (6) prior to the investigation. It was assigned under the Fair Labor Standards Act (FLSA).

Investigation History: No previous history found.

Investigation Type: A full investigation under the FLSA

Period of Investigation: Covering the period from 02/14/2016 to 02/13/2018.

MODO: This firm consists of ten locations. The headquarters location, where records are maintained is at 312

Douglas Ave., Holland, MI. Milagro Six Inc. also has 3 McDonald's locations in Holland, MI, 3 in Wyoming, 1 in Grand Rapids, 2 in Kalamazoo, and subject location in Allegan, for a total of ten businesses. The Grand Rapids, MI DO is the MODO responsible for this geographic region. (b) (7)(E)

[D-1].

COVERAGE

This firm is a single enterprise with ten total locations, which share common control for the common business purpose of running McDonalds franchises. The enterprise shares the common ownership and control of Tony Castillo (50% ownership each with his wife, Virginia Castillo) who is ultimately responsible for overseeing daily operations. Mr. Castillo is in each of his stores one to two days per week to ensure the policies and procedures he has set are being followed. Mr. Castillo signs all paychecks electronically via their payroll system, Alliance. Mr. Castillo and his Director of Operations, Jim Walendzik, set all policies and procedures for the ten locations, including making the company handbook, establishing FMLA polices, wage, leave and general staffing policies. Milagro Six, Inc. has been acquiring McDonald's locations as a franchisee since 1995. The subject location in Allegan, Michigan was purchased on 06/15/17, prior to that it was a corporate held location. This establishment employs (b) (4) employees to work as crew members and shift supervisors. Milagro Six employs approximately (b) (4) employees enterprise wide, including administrative staff and regional managers based out of the corporate office in Holland, Michigan [Exhibits B-1 through B-7 and C-1].

All employees of the enterprise were covered under 203(s)(1)(a) of the FLSA. The establishment grossed in excess of (b) (4) from the acquisition of the location on 6/15/2017 to 2/13/2018. Jim Walendzik stipulated coverage, stating in the initial conference that the enterprise grossed approximately (b) (4) per year in 2015, 2016 and 2017. The subject location was estimated by Mr. Walendzik to gross approximately (b) (4) since it had been opened (06/15/2017 to January 2018) [C-1].

Employees of the firm handle goods in interstate commerce such as Coca-Cola out of Georgia, Heinz out of Pennsylvania, as well supplies from K-Chemicals out of Tennessee [Exhibits B-1 through B-7 and C-1].

203(d) Employer: The owner, Tony Castillo, Director of Operations, Jim Walendzik, and Area Manager, Kathy Tenbrink, are responsible employers as defined in Section 203(d) of the FLSA. They run the enterprise on a daily basis. They set policies and procedures and have ultimate say in the work that employees do [Exhibits B-1 through

B-7 and C-1].

EXEMPTIONS

213(a)(1): This exemption was found to be applicable to General Manager, (b) (6), (b) (7)(C) was paid a salary of (b) (6), (b) (7)(C) per year. (b) (6), (b) (7)(C) was responsible for hiring, firing, promoting and carrying out policies of the local branch. (b) (6), (b) (7)(C) was the only person from the local branch for whom an exemption was claimed or found applicable. All other employees were paid hourly at the establishment [See A-0, employee statements at B-1 through B-7, and IC notes at Exhibit C-1].

STATUS OF COMPLIANCE

Section 206: No violations were cited. The investigation revealed that all employees were paid at least (b) (4) per hour for all hours worked. Mr. Walendzik stated in the initial conference that the firm's policy was to only compensate for breaks of 20 minutes or fewer, thus breaks of 21 minutes or more were unpaid. A review of the records revealed that breaks of 21-29 minutes were very rare and did not cause a minimum wage violation of greater than \$20 for any single employee. The firm requires uniforms which they provide, three shirts, two pair of pants one hat and one name tag per year. A couple of employees stated they were given the option to purchase jackets from but it was not required and did not cause a minimum wage violation for any employees [Exhibits A-0 and B-1 through B-7].

Section 207: No violations were cited. Overtime was rare at this branch establishment. When it was worked employees were paid at time and a half the regular rate of pay for all hours worked over 40 hours in a work week [Exhibits A-0 and B-1 through B-7].

Section 207r: A tour of the establishment, employee interviews, and employer admissions all revealed violations of nursing mother's provision. The firm failed to provide a secure room, free from view with a locking mechanism. The firm further failed to provide sufficient break time for the mother to express milk as the area manager would interrupt the time and demand that (b) (6), (b) (7)(C) return to work prior to finish expressing. The room provided for nursing mothers had a large window that exposed the entirety of room, as well as a surveillance camera monitoring. (b) (6), (b) (7)(C) stated this was the room they had designated for the nursing mother. (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) had problems with area management walking in and yelling at (b) (6), (b) (7)(C) while (b) (6), (b) (7)(C) was expressing milk, this statement was also collaborated with employee interviews. When (b) (6), (b) (7)(C) asked the employer why there was a camera installed in the designated room (b) (6), (b) (7)(C) was not given a reason. Employee interviews also stated (b) (6), (b) (7)(C) would then use (b) (6), (b) (7)(C) vehicle and the Public bathroom to express milk in an attempt to have more privacy [See (b) (7)(E) notes, statements at Exhibits B-1 through B-7, C-1 and photograph at D-2].

Section 211: Violations were cited. The investigation disclosed that Milagro Six, Inc. did not pay for breaks of 21 to 29 minutes in duration [See records at A-0 and ER admissions at C-1].

Section 212: No violations were cited. The firm was found to employ minors aged 16 and 17 to run the cash register, clean and do some food preparation. The restaurant did not have a meat slicer, dough mixer, or compactor. They were not found to have employed minors in violation of any hazardous occupations [Exhibits B-1 through B-7 and C-1].

DISPOSITION

On 02/114/2018 WHI held a final conference at the establishment. WHI (b) (6), (b) (7)(C) represented the Department and the Director of Operations, Jim Walendzik, Area Manager, Kathy Tenbrink, represented the firm. WHI started by explaining enterprise concept for multiple locations under common control for a common business purpose, coverage and exemptions under the Act. WHI reviewed the exemptions found at 541, including those allowed for executive and administrative staff. Mr. Walendzik stated that he understood that the firm consisted of a single enterprise and was covered. Mr. Walendzik stated that he understood the requirements for the exemptions and did not intend to claim exemptions for staff who did not meet the duties requirements in the future. Specifically, he stated that he would continue to only claim the exemption for the general managers at each store. WHI went on to review the provisions highlighted in Sections 206, 207, 211 and 212. WHI reviewed 29 CFR parts 516, 785, 778 and CL 101. Mr. Walendzik stated that he understood and would comply with all provisions in the future.

WHI (b) (6), (b) (7)(C) then addressed the specific violations identified in the investigation. (b) (6), (b) (7)(C) informed Mr. Walendzik that the firm needed to make changes to the break room provided to nursing mothers for all locations in the enterprise. Specifically, for the Allegan, Michigan location WHI requested that the firm cover the windows, disconnect the security camera, make a do not disturb sign for the door and install a locking mechanism by which outside parties cannot enter the room while in use. Mr. Walendzik stated that he understood and would comply with these provisions in the future, making changes across all ten Milagro Six locations. The employer agreed to make the existing room comply with the Nursing Mothers provision. [See employer communications at D-3 and D-4].

WHI informed the employer of WHD policy stating that all breaks under 30 minutes are compensable. Mr. Walendzik stated that he understood and would immediately change the point of sale system to count and compensate for breaks of 1 to 29 minutes in duration across all ten locations [See employer communications at D-3 and D-4].

Publications: The following publications were reviewed in detail and provided to the employer on 02/13/2018: 29

Case ER: Case ID: 1842120

CFR parts 516,785, 541, 778 and CL 101 HRG and Fact Sheets 13, 17A, 17G, 21, 22, 23, 28D, 44, and 77A

(b) (7)(E)

Further correspondence should be sent to: Jim Walendzik, Director of Operations at 312 Douglas Ave, Holland, MI 49423 via telephone T: 616-546-8794 / C: 616-560-3218 or email: Jwalendzik.milagrosix@gmail.com

(b) (6), (b) (7)(C), Wage Hour Investigator
Grand Rapids District Office
March 7, 2018

Narrative Report
Family Medical Leave Act

Case ID: 1842120
Local Case: 2018-191-00969

Milagro Six Inc.
d/b/a McDonald's of Allegan
889 Marshall St., Allegan, MI 49010
PH: [\(269\) 673-6112](tel:(269)673-6112)
FEIN: 85-0437543

Jim Walendzik, Director of Operations
312 Douglas Ave, Holland, MI 49423
T: 616-546-8794 / C: 616-560-3218
Jwalendzik.milagrosix@gmail.com

Tony and Virginia Castillo, 50% ownership each
312 Douglas Ave, Holland, MI 49423 (Headquarters POC)

Case Assignment Information: This case was assigned (b) (7)(E) (b) (6), (b) (7)(C)
(b) (7)(E) violations of the nursing mother's provisions because the nursing room provided to (b) (6), (b) (7)(C) had a large window, had a security camera that other employees had access to, and did not have a lock thus other employees and managers would walk in while (b) (6), (b) (7)(C) was nursing. There was also evidence from employee interviews

and from (b) (6), (b) (7)(C) confirming harassment from managers because (b) (6), (b) (7)(E) was nursing at work. (b) (7)(E) however could not remedy the situation for (b) (6), (b) (7)(C) because (b) (6), (b) (7)(E) child turned one (b) (6) prior to the investigation. It was assigned under the Fair Labor Standards Act (FLSA) but a separate investigation under the FMLA was performed.

Investigation History: No previous history found.

Investigation Type: FMLA

Period of Investigation: Covering the period from 02/14/2016 to 02/13/2018.

MODO: This firm consists of ten locations. The headquarters location, where records are maintained is at 312 Douglas Ave., Holland, MI. Milagro Six Inc. also has 3 McDonald's locations in Holland, MI, 3 in Wyoming, 1 in Grand Rapids, 2 in Kalamazoo, and subject location in Allegan, for a total of ten businesses. The Grand Rapids, MI DO is the MODO responsible for this geographic region. (b) (7)(E)

D-1].

Successor-in-interest: Milagro Six continued the same business operations when taking over McCopco (McDonalds Corporate). They use the same facility and equipment as McDonalds Corporate used. They maintained a continuity of the work force with the same jobs and working conditions, supervisory personnel and production methods. They use the exact same vendors and supplies that McDonalds Corporate used at that location and sell the exact same products. McDonalds Corporate still provides guidance on how the store operates such as labor practices and setting the hours [Exhibits B-1 through B-7 and C-1].

ER Coverage (Reg. 825.104): Milagro Six, Inc. is a covered ER per 29 CFR 825.104, as it employs approximately (b) (4) workers for every work week of the current and preceding calendar year and is regularly engaged in commerce. Further, the firm was deemed to have eligible employees even though Milagro Six, Inc. has only been operating this location since June 2017 based on 29 CFR Part 825.107, Successor-in-Interest coverage factors [Exhibit C-1].

EE Eligibility (Reg. 825.110): This investigation did not address any specific employee but a review revealed that the firm has eligible employees per successor-in-interest factors [Exhibits B-1 through B-7 and C-1].

Qualifying Condition (Reg. 825.113): This investigation did not address any specific employee but a review revealed that the firm had eligible employees with potentially qualifying conditions [Exhibits B-1 through B-7 and C-1].

EE Notification (Reg. 825.303) This investigation did not address any specific employee but a review revealed that the firm employed only a verbal notification policy. The firm did not have any written or communicated FMLA policies. The Director of Operations, Area manager and multiple employees explained that if one needed medical leave for self or family they would informally tell their supervisor and that time was always granted without issue or penalty [Exhibits B-1 through B-7 and C-1].

STATUS OF COMPLIANCE

Policy Review: Violations were cited. The firm did not have any written or communicated FMLA policy. The Director of Operations, Area manager and multiple employees explained that if any staff member needed medical leave for self or family they would informally tell their supervisor and that time was always granted without issue or penalty [Exhibits B-1 through B-7 and C-1].

Protection for EEs (Discrimination/Denial of Leave) (Reg. 825.220): No violations were cited. Employee interviews revealed that the firm granted leave to any employees in need without question, requiring a certification or doctor's note. The investigation revealed that employees returned to their same position, status and pay without any lapse in benefits or other form of interference. The investigation did not reveal that leave was denied for any employees regardless of their FMLA qualifications [Exhibits B-1 through B-7 and C-1].

General Notice (Reg. 825.300(a)): No violation was disclosed. Milagro Six, Inc. posts the general notice in the break room of each of its facilities [Exhibit C].

General Notice (Reg. 825.300(a)(3)): Violations cited. Milagro Six, Inc. stipulated that they had FMLA eligible employees. However, they failed to provide this notice to each eligible employee [Exhibits B-1 through B-7 and C-1].

Eligibility Notice (Reg. 825.300(b)): Violation cited. Employer admissions and employee statements revealed that the firm did not have a practice of issuing eligibility notices (or any FMLA-related notices) to employees in violation of this Section [Exhibits B-1 through B-7 and C-1].

Rights and Responsibilities Notice (Reg. 825.300(c)): Violation cited. Employer admissions and employee statements revealed that the firm did not have a practice of issuing eligibility notices (or any FMLA-related notices) to employees in violation of this Section [Exhibits B-1 through B-7 and C-1].

Designation Notice (Reg. 825.300(d)): Violation cited. Employer admissions and employee statements revealed that the firm did not have a practice of issuing eligibility notices (or any FMLA-related notices) to employees in violation of this Section [Exhibits B-1 through B-7 and C-1].

DISPOSITION OF FINDINGS

Resolution: On 02/13/2018 the Director of Operations, Jim Walendzik agreed to come into compliance with FMLA provisions. Specifically, he stated that Milagro Six, Inc. would make and distribute an FMLA policy to all employees. He stated that the firm would make and distribute where applicable the General Notices per Reg.'s 825.300(a), and 825.300(a)(3), the Eligibility Notice per Reg. 825.300(b), the Rights and Responsibilities Notice per Reg. 825.300(c), and the Designation Notice per Reg. 825.300(d). He stated that the firm would begin to request certifications for potentially FMLA-qualifying leave as a method of tracking use and the firms' responsibilities. He stated that the firm would continue to grant leave for any medical need without question or penalty as has been their policy since Milagro Six was organized [See Exhibits C-1, D-3 and D-4].

Publications Addressed and then mailed following the final conference: Regulation Part 825; WH-380-E; WH-380-F; WH-381; WH-382; WH-384; WH-385; Fact Sheet #28; and Fact Sheet #28 A and #28 D

Recommendation: close upon submission

(b) (6), (b) (7)(C), Wage Hour Investigator
Grand Rapids District Office
March 7, 2018

WHISARD Compliance Action Report

U.S. Department of Labor Wage and Hour Division

Case ID: 1847491 Originating District: Minneapolis MN District Office
Local Filing Number: 2018-250-10281 Investigating District: Minneapolis MN District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 03/05/2018
Assignment Date: 03/15/2018

Employer Information

Trade Name: Lakes Region EMS Legal Name: Lakes Region EMS, Inc.
Address: 40245 Fletcher Avenue EIN: 23-7146628
County: Chisago
NAICS Code: 621910
No. Of Employees: (b) (4)
North Branch, MN55056

Investigation Information

Period Investigated From: 08/01/2017 BNPI:
To: 03/28/2018 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Compliance (no violations found) Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

21.25 hrs; 3(s)(1)(A) cov ER subject to Sec 7(r) break time for nursing mothers; Inv limited to FLSANM; (b) (7)(E) no space, insufficient breaktime (b) (7)(E); FC on 04/25/18 w/ HR Mgr Amanda Neumann and Operations Mgr Ben Wasmund: ER agreed to continued compliance; (b) (6), (b) (7)(C) notified of inv results on 04/27/18; WHI rec admin close (b) (7)(E); Pubs: HRG, FS44, 73, 77a, FLSA.

WHI Signature: _____ Date: 05/04/2018

Reviewed By: _____ Date: _____

FLSANM NARRATIVE REPORT

Trade Name: Lakes Region EMS
Legal Name: Lakes Region EMS, Inc.

Local Filing Number:
2018-250-10281

Subject location: 40245 Fletcher Avenue
North Branch, Minnesota 55056
Telephone: (651) 277-4911

Case ID: 1847491
Tax ID: 23-7146628

COVERAGE

The subject firm is an ambulance service that provides emergency response services in both Minnesota and Wisconsin. The headquarters are located in North Branch, Minnesota and the firm has emergency response coverage points (bases) in the vicinity on both sides of the Minnesota/Wisconsin border. The firm employs approximately (b) (6) workers. The firm's ADV in 2015 was (b) (4) and the 2016 ADV was (b) (4). This investigation is limited to a determination of this location's compliance under the Fair Labor Standards Act's break time provisions for nursing mothers (FLSANM). (See Exhibit C-1). Lakes Region EMS is covered under 3(s)(1)(A) of the FLSA and is bound by the requirements under Section 7(r) for break time for nursing mothers. The firm employs more than fifty employees.

Period of Investigation: August 1, 2017 to March 28, 2018

MODO: The headquarters of Lakes Region EMS is located in North Branch, Minnesota (b) (7)(E)

The Minneapolis DO is the DO responsible for this geographical area. No special instructions apply.

Reason for Investigation: The investigation is related to (b) (7)(E) (b) (6), (b) (7)(C) (b) (7)(E) no space available to express milk at the Minnesota base location and insufficient break time to express milk. (b) (7)(E) (b) (6), (b) (7)(C) was notified of the result of the investigation on April 27, 2018.

EXEMPTIONS

No exemptions were reviewed due to the limited nature of this investigation.

STATUS OF COMPLIANCE

History: No history under FLSANM.

Reason for Investigation:

Section 6: No determination of compliance under Section 6 was made due to the limited nature of this investigation.

Section 7: No violations were disclosed under Section 7(r) of the FLSA.

(b) (6), (b) (7)(C) (b) (7)(E) the employer failed to provide a space, shielded from view and free from intrusion, at the Minnesota base location. The Minnesota base location is located within the Stacy Fire Department in Stacy, Minnesota. A tour of the location disclosed that there is a space, with locking doors and window blinds, electrical outlets and seating, available at that location (See Exhibit D-3)

(b) (7)(E) (b) (6), (b) (7)(C) related to reasonable break time to express milk. (b) (6), (b) (7)(E) the employer's requirement that (b) (6) respond to calls to move from one base to the next within three to five minutes and in relation to an emergency call, did not allow for sufficient time for (b) (6) to express breast milk. The investigation disclosed that ambulance drivers and EMTs work shifts of either twelve or twenty-four hours, 60-65% of which is downtime. During this 'downtime' employees are free to use this time as they wish (i.e. sleeping, watching TV, eating), as long as they can respond to a call in relation to an emergency within three to five minutes. During this time, employees are free to use the provided break space to express breast milk. Due to the emergency nature of the position, it is impossible to schedule or predict the timing of emergency calls. Furthermore, the ambulance drivers/EMTs work in teams of two and rotate through three to six base stations each shift and both must travel/respond together in relations to emergency calls. When out at the various bases used for responding to calls, the next nearest employee may be up to thirty minutes away and unable to cover for break times. For this reason, it was determined that the break time afforded to employees is sufficient and reasonable in relation to the type of work performed by the firm per FOH 59v00(b)(3) (Exhibit D-2).

No other determinations of compliance were made under Section 7 due to the limited nature of this investigation.

Section 11: No determination of compliance under Section 11 was made due to the limited nature of this investigation.

Section 12: No determination of compliance under Section 12 was made due to the limited nature of this investigation.

DISPOSITION

An initial conference was held on April 12, 2018, by telephone. Human Resources Manager, Amanda Neumann,

Operations Manager, Ben Wasmund, and WHI (b) (6), (b) (7)(C) participated in the call. The requirements under Section 7(r) of the FLSA were reviewed and the employer immediately agreed to comply. The employer stated that they had been working to ensure compliance and had recently installed door locks at all base locations to ensure the space used for break time for nursing mothers is private and free from intrusion. The employer stated that they were also working to draft a formal policy to further ensure compliance with the requirements of the law. WHI (b) (6), (b) (7)(C) reviewed (b) (7)(E) and scheduled a time to tour the location within the Stacy Fire Department. On April 17, 2018, WHI (b) (6), (b) (7)(C) toured the location at the Stacy Fire Department with Operations Manager Ben Wasmund (Exhibit D-3).

A final conference was held by telephone on April 24, 2018. In attendance on the call were Human Resources Manager Amanda Neumann, Operations Manager Ben Wasmund, and WHI (b) (6), (b) (7)(C).

WHI (b) (6), (b) (7)(C) explained that this investigation was limited to the firm's compliance with Section 7(r) of the FLSA and that no other determinations of compliance under the FLSA were made.

WHI (b) (6), (b) (7)(C) explained that Lakes Region EMS is covered because it employs in excess of fifty employees and that all employees that are not exempt under Section 7 of the FLSA are subject to Section 7(r). The investigator explained that no violations were disclosed. Ms. Neumann immediately reaffirmed the firm's intent to comply with the law and stated that she would be reviewing the firm's policy to ensure continued compliance.

The prohibition on retaliation was reviewed. The employer stated that they planned to terminate the employment of (b) (6), (b) (7)(C) for reasons wholly unrelated to (b) (6), (b) (7)(C) use of break time for nursing mothers and (b) (6), (b) (7)(C) subsequent (b) (7)(E) to the US DOL-WHD. The employer stated that the decision to terminate the employee was made prior to WHD's contact with the firm and that the decision was made in relation to document performance and safety concerns. WHI (b) (6), (b) (7)(C) reiterated the prohibition on retaliation and the firm stated that they understood the prohibition on retaliation.

Publications provided: HRG, Fact Sheets #44, 73, 77A, FLSA

Recommendations: WHI recommends administrative close (b) (7)(E)

(b) (6), (b) (7)(C)

Wage Hour Investigator
May 2, 2018

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1847802 Originating District: Des Moines IA District Office
Local Filing Number: 2018-180-15744 Investigating District: Des Moines IA District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 03/07/2018
Assignment Date: 03/07/2018

Employer Information

Trade Name: Avoca Food Land Legal Name: Avoca Food Land Corporation
Address: 212 W. Wood St. EIN: 81-3647932
County: Pottawattamie
NAICS Code: 445110
No. Of Employees: (b) (4)
Avoca, IA51521

Investigation Information

Period Investigated From: 03/16/2016 BNPI:
To: 03/15/2018 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☐
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

14 HRS FC held with with Dina Corbett, Owner. ER notified of violation as 1 EE was denied access to a functional space to express milk; however, the violation did not lead to a monetary liability.

Pubs: HRG, Fact Sheets #16, #21, #43, #22, #23, #73, WH-1489, WHD poster pack (English), WH-1330, FLSA, Part 516, Part 541, Part 778, and Part 785.

Based on the ATC, administrative closing recommended.

WHI Signature: _____ Date: 03/16/2018

Reviewed By: _____ Date: _____

Avoca Food Land Corporation
d/b/a Avoca Food Land
212 West Wood Street
Avoca, IA 51521
Phone: (712) 642-3148
<http://www.foodland.biz/avoca.html>
WHISARD Case ID: 1847802

FLSNM Narrative

COVERAGE

The subject firm is a grocery store, which will have a fully operating pharmacy inside the store effective April 1, 2018. This branch location was purchased in August 2016. The federal identification number is 81-3647932. Dina Corbett is the primary owner of the subject firm.

For mapping purposes, Dina Corbett stated to this WHI that the subject firm owns the additional branch locations:

Food Land Woodbine
6205th Street
Woodbine, IA 51579
EIN: 42-1302021

Food Land Missouri Valley (considered Corporate)
407 West Huron
Missouri Valley, IA 51555
EIN: 42-1302021

Audubon Food Land

104 Market Street
Audubon, IA 50025
EIN: 47-4382411

Food Land Pharmacy
423 Walker Street
Woodbine, IA 51579
EIN: 81-0945456

Avoca Food Land Pharmacy (inside grocery store)
212 West Wood Street
Avoca, IA 51521
EIN: 81-4132082 (opening April 1,2018)

The ADV for the entire investigative period, March 16, 2016 to March 15, 2018, exceeds \$500,000.00 each fiscal year; and the subject firm has two or more employees engaged in interstate commerce. In regard to the interstate commerce activities, Dina Corbett, Owner, confirmed cashiers regularly accept and process credit; and office employees regularly process A/R and A/P to/from vendors out of state. Per Dina Corbett, Owner, the subject firm does not dispute coverage under the FLSA; thus, the subject firm would not be submitting any documentation or information regarding gross annual dollar revenues. (Exhibit C-1)

According to Dina Corbett, Owner, the subject firm employs more than 50 employees enterprise-wide. Accordingly, the subject firm cannot claim undue hardship in regards to compliance status with Section 207(r)(1).

Section 3(d): Dina Corbett, Owner, meets the definition of employer under Section 3 (d) of the Fair Labor Standards Act and has successor liability for the following reasons:

1. Ms. Corbett handles the day to day operations of the business.
2. Ms. Corbett makes all the daily operating decisions regarding the business; and is responsible for the hiring, firing, and training of employees.

3. Ms. Corbett enforces company policies, determining employee pay rates, payment of wages to employees, and has the authority to make significant financial decisions.

EMPLOYMENT RELATIONSHIP: This investigation was limited to the Section 207 (r)1, break time for nursing mothers, (b) (7)(E). Accordingly, employment relationship issues

MODO:

The Des Moines DO is the MODO. (b) (7)(E)

EXEMPTIONS

Since this investigation was limited to the nursing mother (b) (7)(E) the only determination made concerning exemptions was that (b) (6), (b) (7)(C) was a non-exempt employee. (b) (6), (b) (7)(C) was an hourly paid production worker. The employer did not claim (b) (6), (b) (7)(C) exempt and no exemption was found applicable.

STATUS OF COMPLIANCE

This FLSA investigation is limited to 207 (r)1. This limited FLSA investigation was initiated (b) (7)(E) (b) (6), (b) (7)(C) (b) (7)(E), on February 26, 2018, the Store Manager, (b) (6), (b) (7)(C), told (b) (6), (b) (7)(C) to express milk in the public restroom because the office (which (b) (6), (b) (7)(C) normally used) was occupied when (b) (6), (b) (7)(C) asked to use it to express milk. According to (b) (6), (b) (7)(C), as (b) (6), (b) (7)(C) was denied access to the office to express milk, (b) (6), (b) (7)(C) did not express milk until (b) (6), (b) (7)(C) shift ended and (b) (6), (b) (7)(C) went home. (b) (7)(E)

According to Dina Corbett, Owner, she was made aware that (b) (6), (b) (7)(C) instructed (b) (6), (b) (7)(C) to use the public restroom to express milk and was given a written warning accordingly. (Exhibit E-3)

On March 15, 2018, (b) (6), (b) (7)(C) confirmed that since the above occurrence, (b) (6), (b) (7)(C) has not been denied access to the office to express milk. According to (b) (6), (b) (7)(C), the office is a private location, (b) (6), (b) (7)(C) can

close the door, and (b) (6), (b) (7)(C) can lock the door when (b) (6), (b) (7)(C) is expressing milk. (b) (6), (b) (7)(C) stated there is a camera in the office but (b) (6), (b) (7)(C) does not express milk in the camera view and that the camera does not interfere with (b) (6), (b) (7)(C) feeling of privacy while expressing milk.

PRIOR HISTORY

A WHISARD search did not reveal a prior history.

29 U.S. Code §206 - Minimum Wage: The violation of denying access to a functional space to express milk did not lead to a minimum wage violation.

29 U.S. Code §207 - Overtime: The violation of denying access to a functional space to express milk did not lead to an overtime violation.

29 U.S. Code §211 - Recordkeeping: Since this investigation was limited to the nursing mother (b) (7)(E) no determination was made pertaining to the record keeping requirements of the Act. However, the current posters were displayed. (Exhibit E-4a)

29 U.S. Code §212 – Child Labor: Since this investigation was limited to the nursing mother (b) (7)(E) no determination was made pertaining to the child labor requirements of the Act.

DISPOSITION

During the March 15, 2018, a final conference was held with Dina Corbett, Owner.

For the final conference, this WHI asked Ms. Corbett to refer to Fact Sheet #73: Break Time for Nursing Mothers under the FLSA, which was provided with the initial conference appointment letter. This WHI explained to Ms. Corbett that covered employees are required to provide reasonable break time for an employee to express breast milk for (b) (6), (b) (7)(C) nursing child for 1 year after the child's birth; and were required to do so each time the employee needs to express the milk. This WHI further explained that such employers are also required to provide a place, other than a bathroom, that is shielded from view and free from intrusion, which may be used by an employee to express breast milk. Ms. Corbett stated that she

understood the requirements.

This WHI notified Ms. Corbett that a violation was cited as (b) (6), (b) (7)(C) was denied access to a functional space to express milk; however, the violation did not lead to a monetary liability.

Ms. Corbett stated the violation occurred as the new Store Manager was not aware that a public restroom could not be used to express breast milk. For future compliance, this WHI advised that perhaps all Store Managers should be trained on 207 (r) requirements of the Fair Labor Standards Act for Nursing Mothers. Ms. Corbett agreed.

Ms. Corbett was provided the following publications: HRG, Fact Sheet #16, Fact Sheet #21, Fact Sheet #43, Fact Sheet #22, Fact Sheet #23, Fact Sheet #73, WH-1489, WHD poster pack (English), WH-1330, FLSA, Part 516, Part 541, Part 778, and Part 785.

(b) (7)(E) administrative closing recommended.

(b) (6), (b) (7)(C)

Wage and Hour Investigator
March 15, 2018

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1852293 Originating District: Minneapolis MN District Office
Local Filing Number: 2018-250-10342 Investigating District: Minneapolis MN District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 04/26/2018
Assignment Date: 05/04/2018

Employer Information

Trade Name: Gold Cross Ambulance

Legal Name: Gold Cross Ambulance INC

Address: 1055 Wittmann Lane

EIN: 39-1702433

County: Winnebago

NAICS Code: 621910

Menasha, WI54952

No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 05/09/2016

BNPI:

To: 05/08/2018

Reinvestigation: ☐

Investigation Type: (b) (7)(E)

Recurring Violation: ☐

Investigation Tool: Limited Investigation

Future Compliance Agreed: ☐

Compliance Status: Agree to Comply

Involved in AG: ☐

Recommended Action:

BWFS: ☐

RO/NO Review: ☐

CMP: ☐

Follow Up Investigation: ☐

Litigation: ☐

Other Action: ☐

Civil Action: ☐

Denial of Future Certificate: ☐

Criminal Action: ☐

BW Payment Deadline:

Submit For Opinion: ☐

Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	
Total Violations Under FLSNM:	2						\$0.00

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

8hrs (b) (7)(E) Limited Investigation (FLSNM) enterprise cov Sec 3(s) 1 (A) Sec 7. ER did provided NM with the required break time to Express milk. No investoigate MW, OT, RK and CL. Investigation was limited to FLSNM. Held FC on 05/09/18 with ER via phone call with ER rep Mr Steve Radish Director of Gold Cross Ambulance INC. Firm ATC no BWs due. Pubs; FS77A, FS73, FLSA Recomend Admin Close

WHI Signature: _____ Date: 05/15/2018

Reviewed By: _____ Date: _____

Gold Cross Ambulance INC

Case ID: 1852293

Trade name: Gold Cross Ambulance INC.

Legal name Gold Cross Ambulance INC.

1055 Wittman Lane

Menasha, WI 54952

EIN: 39-1702433

Company Contact:

Steve Radich

Administrative Director

Office: 920-967-6066

Cell: 920-727-3033

Principals:

Mark Fredrickson 100%

COVERAGE

The subject firm is an emergency medical transport company that employs paramedic who provide emergency ambulance services to the general public. (See exhibit E-1) There are (b) (4) employees at that support 10 substations. The main Office is located at 1055 Wittmann Dr. Menasha, WI. The firm receives supplies and inventory from various medical transportation vendors across the United State, like Grainger Corp, 6450 S. Austin Ave. Chicago, IL 60638.

The Firm has an annual dollar value for 2015 of (b) (4), for 2016 (b) (4) and (b) (4) for 2017. The firm has enterprise coverage under Section 3 (s) 1(A).

Steve Radich is the 3(d) employer: He is the authorized to make changes to the company to affect policy. He delegates the responsibility of hiring and firing of employees to his managers, set schedules parameters, makes policy, and is responsible for payroll policies and procedures. His primary duty is management of the day to day business.

Period of Investigation: 05/09/2016 to 05/08/2018.

MODO: Minneapolis MN District Office

Investigation: Limited

Exemption *not applicable*

STATUS OF COMPLIANCE

Reason for Investigation: (b) (7)(E)
(b) (7)(E) (b) (6), (b) (7)(C), stating that (b) (6), (b) (7)(C) did not get the break time required for a nursing mother to express milk. (b) (6), (b) (7)(C) further states that the proper space was not being accommodated to (b) (6), (b) (7)(C)

History: FMLA limited investigation on 11/04/2014, back wages refused (b) (6), (b) (7)(C)

Section 6 – Not investigated, limited to nursing mother

Section 7 – Overtime not investigated.

- Sec 7(r) 1 (A) the firm did not provide two non-exempt nursing mothers the required breaks to express milk.
- Sec 7(r) 1 (B) the firm did not provide a dedicated space for the nursing mothers to use.

Sec. 11- Not investigated, limited to nursing mother

Sec. 12 – Not investigated, limited to nursing mother

DISPOSITION

WHI held Final conference via telephone with the firm's representative Steve Radich, on 05/09/2018.

WHI explained coverage to firm, and that the firm has enterprise coverage.

WHI discussed with firm the protection Sec 7(r) nursing mothers would be the scope of the investigation. The firm has two qualifying employees under Sec 7(r) that are nursing mother who had given birth within the year. The firm didn't prevent the nursing mothers from taking breaks to express milk, but interrupted their breaks frequently with dispatch. The firm also did not provide a dedicated space for the mothers to express milk, thus violating Sec 7(r) 1 (A) and 7(r) 1 (B).

The firm admits that they did not fully understanding the FLSA's law for nursing mothers, and have now created policy that will be going out to all the substation managers and to all the employees addressing the procedures for nursing mothers breaks and space provided for expressing milk.

The firm will now be providing a dedicated space marked private for the sole use of expressing milk by the nursing mothers. The firm also will require that nursing mothers, when they are on break for the purpose of expressing milk, they will be off the clock and will let dispatch know they are unavailable for dispatch. When the break is over, they must contact dispatch with availability and punch back in on the clock.

The firm agrees to comply with the FLSA.

Pub: FLSA, FS73 and FS77A

Recommendation Admin Close

(b) (6), (b) (7)(C)

May 15, 2018

WHI Wage and Hour

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1854280 Originating District: St. Louis MO District Office
Local Filing Number: 2018-340-00482 Investigating District: St. Louis MO District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 05/17/2018
Assignment Date: 06/07/2018

Employer Information

Trade Name: Walmart Legal Name: Walmart, Inc.
Address: 1901 1st Avenue EIN: 71-0405188
County: Whiteside
NAICS Code: 452112
Rock Falls, IL61071 No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 07/11/2016 BNPI:
To: 07/10/2018 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Full Investigation Future Compliance Agreed: ☒
Compliance Status: Compliance (no violations found) Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

WHISARD Compliance Action Report

Conclusions & Recommendations:

FLSA limited inv - nursing mothers. (b) (7)(E) ER not accom, room not private. (b) (7)(E) ER provided private room and time whenever EEs need a break. FC w/mgr D Courtney on 8/6/18 who ATC. Pubs: HRG, FS28d, FS44, FS73. Recommend conclusion

WHI Signature: _____ Date: 08/10/2018

Reviewed By: _____ Date: _____

FLSA Narrative

Walmart, Inc.
1901 1st Ave.
Rock Falls, IL 61071

Case ID: 2018-340-00482
WHISARD: 1854280
FEIN: 71-0405188

Contact: Donna Courtney – Store Manager – 815-626-6800

Coverage:

The subject location is a Walmart store which sells various retail and grocery items to the general public. The company was incorporated in Delaware on 07/18/1977. The headquarters location is in Bentonville, AR. Mr. Doug McMillon is the President and CEO of the corporation. Ms. Donna Courtney is the store manager and responsible for all the day-to-day activities at the subject location. The subject location employs approximately (b) (4) people. The enterprise employs over 1 million people worldwide.

Enterprise coverage under FLSA Section 3(s)(1)(A) is applicable for the entire investigative period because the annual dollar volume (ADV) was reported to be over between \$485 and \$500 billion for the previous three years. Cashiers are individually covered because they regularly process customer credit cards. Employees handle items which have traveled in interstate commerce such as Budweiser which was produced in Missouri.

The period of investigation was 05/15/2018 to 07/10/2018.

MODO: The Southwest Region Program Operations Office is the Main Office District Office.

See C Exhibits

Exemptions:

There are currently two employees requiring need for break time because they are nursing mothers. Both of those employees are nonexempt cashiers. The employer employs well over 50 employees (See Exhibits B-1, C-1).

Status of Compliance:

This limited FLSA nursing mothers investigation was initiated (b) (7)(E) (b) (6), (b) (7)(C) the employer was not providing a private room to express milk. The room the employer did provide was not private and there are cameras in the room. (b) (7)(E)

Numerous attempts were made to contact (b) (6), (b) (7)(C) for a statement. Voicemails were left requesting a call back on 07/09/2018 and 07/10/2018. (b) (6), (b) (7)(C) was scheduled to come into work at 12:00pm on the day of the initial conference. WHI (b) (6), (b) (7)(C) waited for (b) (6), (b) (7)(C) to arrive for a statement, however at 12:45pm (b) (6), (b) (7)(C) called in sick to work. A call was made on 08/06/2018 and (b) (6), (b) (7)(C) voicemail was full (See Exhibit E-1).

One other employee, (b) (6), (b) (7)(C), also has been using the nursing mothers break program. (b) (6), (b) (7)(C) advised the employer provides a private place for (b) (6), (b) (7)(C) to express breastmilk located in the server room. The room is lockable, the windows are covered, there is a sign on the door when it is being occupied for nursing mothers, there are no cameras in the room, and the employees can use this room whenever they need to express breastmilk. If the room is occupied for any reason, employees can use a different room which is also lockable, has no windows, and a sign advising a nursing mother is using the room. (b) (6), (b) (7)(C) said a few months ago (b) (6), (b) (7)(C) went to express breastmilk shortly before (b) (6), (b) (7)(C) was to go. When (b) (6), (b) (7)(C) got to the room and it was occupied, (b) (6), (b) (7)(C) became upset and said the employer was not accommodating (b) (6), (b) (7)(C) (See Exhibit B-1, D-1).

The employer has a corporate policy for breastfeeding mothers which was provided by the MODO prior to the initial conference. The investigation found compliance with nursing mothers provision of the FLSA (See Exhibit D-2, D-4).

The other aspects of FLSA, including Child Labor, were not examined as the focus of this investigation was break time for nursing mothers.

Disposition:

A final teleconference was held on 08/06/2018 with manager Donna Courtney representing Walmart, Inc. and WHI (b) (6), (b) (7)(C) representing WHD.

The FLSA was briefly discussed. WHI (b) (6), (b) (7)(C) advised the focus of this investigation was the break time for nursing mothers provision on the FLSA. WHI (b) (6), (b) (7)(C) explained the requirements of the law. The employer appears to be in compliance by providing a private room, the windows are obscured, there is an outlet in the room, there are no cameras in the room, there is a sign telling all the room is being used by a nursing mother, and employees are allowed to take breaks when needed to express breastmilk. Ms. Courtney advised there is a corporate policy which they follow and will continue to comply.

Pubs: HRG, FS28d, FS44, FS73

Recommend conclusion.

(b) (6), (b) (7)(C)

Wage & Hour Investigator
08/10/2018

WHISARD Compliance Action Report

U.S. Department of Labor Wage and Hour Division

Case ID: 1855493 Originating District: Detroit MI District Office
Local Filing Number: 2018-185-10868 Investigating District: Detroit MI District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 06/04/2018
Assignment Date: 06/04/2018

Employer Information

Trade Name: Detroit Department of Transportation Legal Name: Detroit Department of Transportation
Address: 1301 E Warren Ave EIN: 38-6004606
County: Wayne
NAICS Code: 09770
No. Of Employees: 1025
Detroit, MI 48207

Investigation Information

Period Investigated From: 06/16/2018 BNPI:
To: 08/06/2018 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Full Investigation Future Compliance Agreed: ☐
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

Total Violations Under FLSA: 1 \$0.00

WHISARD Compliance Action Report

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	
Total Violations Under FLSNM:	2						\$0.00

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

Violations asserted under Section 7(r)1(a) for failure to provide reasonable break time by creating time constraints (four 30-minute breaks) in written policy & 7(r)1b for failure to provide space.

Remedies: ER has created or identified at least 5 nursing mother stations throughout the city. ER has agreed to modify written policy by removing time constraints.

FC held 8/22/18 SD

WHI Signature: _____ Date: 08/22/2018

Reviewed By: _____ Date: _____

Fair Labor Standards Act (FLSA)

Narrative Report

Employer: Detroit Department of Transportation (DDOT)

Administration Building: 1301 E. Warren, Detroit, MI 48211

Employer Representation:

Valerie A. Colbert-Osamuede, Esq.
Deputy Director of Labor Relations, Labor Relations Division
Human Resources Department, City of Detroit
2 Woodward Avenue, Ste. 332
Detroit, Michigan 48226
313-224-3860 (Office)
313-224-3866 (Direct)
313-224-0738 (Fax)
Colbv@detroitmi.gov

Rosita C. Brockington, Employee Services Consultant III
Detroit Department of Transportation
313-573-8724
Brockingtonr@detroitmi.gov

Additional Contacts:

Anita Ellsworth, Labor Relations Manager
Human Resources Department, City of Detroit
313-224-3860

Angelica Jones, Interim Director
Detroit Department of Transportation
313-833-7670

Duane Yuille, General Manager/Administration
Detroit Department of Transportation
313-833-1623

FEIN: 38-6004606

WHISARD Case ID: 1855493

Local Case File ID: 2018-185-10868

Case Summary: This investigation was initiated (b) (7)(E) (b) (6), (b) (7)(C) under the Break Time for Nursing Mothers, Section 29 U.S.C. 207 (r) of the Fair Labor Standards Act. (b) (6), (b) (7)(C) for the Detroit Department of Transportation (DDOT) (b) (7)(E) (b) (6) employer did not provide (b) (6) with an adequate space or reasonable time to express milk. (b) (6), (b) (7)(C) (b) (7)(E).

I. COVERAGE:

Section 203(s)1(c)

Public Agency:

DDOT is a branch of the City of Detroit municipality. DDOT operates as a public agency and is therefore covered as a Named Enterprise under the FLSA. DDOT employs 1,025 workers with several departments (see organizational chart, exhibit D-5). The investigation was limited to (b) (6), (b) (7)(C) and provisions enforced under the Break Time for Nursing Mothers under Section 29 U.S.C. 207(r) of the FLSA.

MODO:

The Detroit District office is the MODO.

Section 3(d) Employer

Attorney, Ms. Valerie Colbert-Osamuede, acted on behalf of DDOT throughout the course of the investigation and is therefore identified as the Section 203(d) Employer as defined under the Act. Ms. Colbert-Osamuede represented the company at each meeting and provided requested documents to Wage & Hour. Ms. Colbert-Osamuede indicated she and her team researched and developed the City of

Detroit's lactation policy for City of Detroit employees.

Period of investigation 6/16/18 through 8/6/18;

The period of investigation covered the time when (b) (6), (b) (7)(C) requested space to express breast milk until the establishment was physically investigated.

II. EXEMPTIONS:

No exemptions were challenged, nor found to be applicable:

Section 213(a)(1): (b) (6), (b) (7)(C) was not employed in a bona fide executive, administrative, or professional capacity, as defined under CFR Part 541.

Section 213(b)(1): (b) (6), (b) (7)(C) was not an employee with respect to whom the Secretary of Transportation has authority as (b) (6) does not cross state lines.

III. STATUS OF COMPLIANCE:

REASON FOR INVESTIGATION:

Section 207(r)(1)(a)&(b) (b) (7)(E) (b) (6), (b) (7)(C) (b) (7)(E) and identified at the initial conference held on 8/6/18 with DDOT Employee Services Consultant, Rosita Brockington, and Anita Ellsworth and Valerie Colbert-Osamuede from City of Detroit Labor Relations. WHI (b) (6), (b) (7)(C) represented Wage & Hour.

Section 207(r)(1)(a) Violations:

Written company policy stated nursing mothers were limited to 4 breaks within an 8 hour period to express break milk and the break period shall not exceed 30 minutes in duration each instance (exhibit D-2).

Per FOH 59v00(a)(11) Break Time guidance, it was determined this was not reasonable based on the facts of this particular case. In a follow-up conversation with the complainant on 8/6/18, (b) (6), (b) (7)(C) stated in addition to pumping time, (b) (6), (b) (7)(C) must to travel to the transit center and upon arrival request a security guard to provide access to the floor by scanning a security badge. After pumping, (b) (6), (b) (7)(C)

washes (b) (6), (b) (7)(C) hands, cleans (b) (6), (b) (7)(C) pumping equipment, and travels back to (b) (6), (b) (7)(C) bus. (b) (6), (b) (7)(C) states these tasks cannot be completed in the 30 minute time period allotted by (b) (6), (b) (7)(C) employer.

Section 207(r)(1)(b) Violations:

It was indicated that DDOT only began to create nursing mother spaces after receiving a call from WHI (b) (6), (b) (7)(C) on 8/1/18 regarding the investigation. Ms. Rosita Brockington stated during the initial conference that DDOT had modified a room in the bottom level of the Rosa Parks Transit Terminal on 8/2/18, several months after the complaint was submitted.

Compliance

The newly created nursing mother space at the Rosa Parts Transit Center was inspected by WHI (b) (6), (b) (7)(C) at the initial conference (see photo, exhibit D-6c). The space is identified to be “functional”, as nursing mothers have access to a common area sink (exhibit D-6a) and storage in the form of lockers for any pumping equipment (exhibit D-b).

The space is identified to be “free from intrusion” as a key card is required to reach this floor and to enter the room. Additionally, the nursing mother can lock the room (exhibit D-6d)

The space is identified to be “shielded from view”, as there are no windows and a door that closes/locks.

Ms. Colbert-Osamuede stated (b) (6), (b) (7)(C) was informed of the space created at Rosa Parks Terminal on 8/4/18 and it was used the following day.

Section 206, Minimum Wage: The investigation was limited to enforcement under the Break Time for Nursing Mothers of Section 29 U.S.C. 207(r) of the FLSA.

Section 207, Overtime: The investigation was limited to enforcement under the Break Time for Nursing Mothers of Section 29 U.S.C. 207(r) of the FLSA.

Section 207(r)(3) Undue Hardship Defense: The employer did not claim the undue hardship defense, nor does it apply. DDOT currently has (b) (4) employees that work for the department.

Section 211, Record Keeping: The employer failed to post FLSA poster. FLSA poster contains Nursing Mother Provisions.

Section 212, Child Labor: The investigation was limited to enforcement under the Break Time for Nursing Mothers of Section 29 U.S.C. 207(r) of the FLSA.

Disposition:

In a case status call on 8/8/18 with Ms. Valerie Colbert-Osamuede, WHI (b) (6), (b) (7)(C) explained that the current City of Detroit's lactation break policy was not in accordance with Federal labor laws due to the limits imposed on break times. Ms. Colbert-Osamuede indicated the city would look into modifying the policy. Ms. Colbert-Osamuede further stated the City of Detroit planned to request an opinion letter from the Wage Hour Administrator regarding the definition of "reasonable" break times.

On 8/20/18, Ms. Colbert-Osamuede provided Wage Hour with photos of an additional completed nursing mother station located at the DDOT Shoemaker Terminal. The room appears to meet the provisions under 7(r) (exhibit D-8a – D-8j).

The final conference was held on 8/22/18 at the City of Detroit Coleman A. Young Municipal Center. Ms. Colbert-Osamuede and Elizabeth Irby from Human Resources represented DDOT. WHI (b) (6), (b) (7)(C) represented Wage & Hour.

WHI (b) (6), (b) (7)(C) briefly reviewed the provisions of the FLSA and protections for nursing mothers under Section 207(r):

Section 207(r)(1)(a)

WHI (b) (6), (b) (7)(C) stated the City of Detroit's written lactation policy was not in accordance with Federal labor laws and the employer did not have authority to set time limits on break times for nursing mothers. Ms. Colbert-Osamuede stated the City of Detroit has agreed to change the lactation policy and remove all time constraints (see exhibit D-2a). Ms. Colbert-Osamuede stated the new policy would be released to all employees by 8/22/18.

Section 207(r)(1)(b)

The employer indicated DDOT has since created additional nursing mother stations located in the Central/Administration Building and at the Gilbert Terminal (see e-mail notification exhibit D-9, and map of locations, exhibit D-10).

Ms. Colbert-Osamuede stated she also planned to identify spaces throughout the city which are already established as nursing mother stations, such as the St. John's Hospital Nursing Mother's room (exhibit-7 – 7c), and would ensure employees are made aware of all nursing mother locations in the next monthly bulletin.

Ms. Colbert-Osamuede confirmed Employee Services Consultant, Ms. Brockington, would announce the newly established nursing mother locations at the DDOT all-staff Sensitivity Training, which is scheduled for September, 2018.

As a result of the investigation, DDOT has identified or created a total of 5 nursing mother stations throughout the city of Detroit and agreed to a full policy change for future compliance.

(b) (6), (b) (7)(C) was notified of the results of the investigation on 8/22/18 and directed to discuss and arrange the logistics of (b) (6), (b) (7)(C) nursing breaks with Ms. Rosita Brockington. (b) (6), (b) (7)(C) thanked Wage & Hour for the results of the investigation.

Recommendations: It is recommended this case be concluded.

Publications Provided:

- FLSA Handy Reference Guide
- FLSA, The Law
- Regulation 785, Hours Worked
- Regulation 516, Records to be Kept by Employers
- Fact Sheet #44
- Fact Sheet #73
- Fact Sheet #77a
- Nursing Mothers FAQ's

(b) (6), (b) (7)(C)

Wage & Hour Investigator

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1856708 Originating District: Grand Rapids MI District Office
Local Filing Number: 2018-191-01094 Investigating District: Grand Rapids MI District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 06/17/2018
Assignment Date: 07/16/2018

Employer Information

Trade Name: LG Chem Michigan Inc.

Legal Name: LG Chem Michigan Inc.

Address: 1 LG Way

EIN: 84-1563669

County: Ottawa

NAICS Code: 335911

Holland, MI 49423

No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 04/01/2018 BNPI: 0
To: 07/19/2018 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☒
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

3(s)(1)(A) Ent cov. FLSNM case (b)(7)(E) had inadequate space to express milk. (b)(7)(E). WHT conducted on site IC and inspection of facilities w/ ER Jeremy Hagemeyer on 07/19/18. ER admitted to prev violations, but were now in compliance. ER agree to future compliance. Attempts to notify (b)(7)(E) of remedy unsuccessful Rec adm cl. Pubs sent to ER HRG, FS44, FS28D, FS73, FS77A, FMLA, FMLA Poster, FLSA Poster

WHI Signature: _____ Date: 08/14/2018

Reviewed By: _____ Date: _____

Name: LG Chem

Legal Name: LG Chem Michigan Inc.

Address: 1 LG Way Holland, MI 49423

Contact POC: Jeremy Hagemeyer, Human Resources Manager

Phone: 616-494-8574

FEIN: 84-1563669

Case Assignment Information

Case was assigned as (b) (7)(E) review of a LG Chem Michigan Inc. in Holland, MI after (b) (6), (b) (7)(C) (b) (7)(E) was not given a reasonable space to express milk. (b) (6), (b) (7)(C) (b) (7)(E) was told by (b) (6), (b) (7)(C) employer she could use the women's fitness locker room that had no obstruction of view, which is in violation of the FLSA Nursing Mother's provisions. (b) (7)(E) by the employer, but once a problem was noticed they continued to attempt to remedy the violation. The employer agreed to comply and prior to our visit came into compliance by ordering and using 3 partitions and a table to be used in the women's fitness locker room. (b) (6), (b) (7)(C) provided (b) (7)(E), but all attempts to notify (b) (6), (b) (7)(C) of the case outcome have been unsuccessful. The employer agrees to comply going forward and is taking proactive measures to ensure future compliance.

Type of Investigation: Limited Investigation of firm under the Break Time for Nursing Mother's provisions of the FLSA

Period of Investigation: 4/1/2018-7/19/2018

Coverage

The firm is covered by the provisions of the Fair Labor Standards Act. LG Chem Michigan Inc. is part of a large global firm with three United States centers and employing (b) (4) individuals at the Holland, Michigan location. Employees of the firm are assumed coverage on an enterprise basis under the Act due to the ADV exceeding \$500,000. Human Resources Manager Jeremy Hagemeyer stated they make far greater than

\$500,000 ADV per year [See Exhibit C-1a, C-2a].

The firm is run by a board of Directors consisting of the following individuals:

Jin-Soo Park (Vice Chairman and CEO), Nick Kassanos (Holland Plant Manager/President) and Jang Woo Park (Treasurer)

The firm's local policies are developed and ran by a local Human Resources Management group who enacts policies such as the provisions of Break Time for Nursing Mothers. Jeremy Hagemeyer is the Human Resources Manager and also sits on this board. This group is responsible for local policy to a large extent, and is responsible for any facility changes to be made due to Break time for Nursing Mothers. At the local level, Laurie Sprague is the Nursing mother point of contact and has been a main contributor meeting compliance. [See Exhibit C-0, C-1].

MOD0: (b) (7)

MOD0 Trade Name: LG Chem Michigan Inc.

MOD0 Manager: Amador Diaz

MOD0 Instructions: (b) (7)(E)

Exemptions

213(a)(1)

A 213(a)(1) Administrative Exemption was not claimed and does not apply to the affected employees.

(b) (6), (b) (7)(C) has been employed (b) (6), (b) (7)(C) as a Technical Operator 2. (b) (6), (b) (7)(C) is compensated on an hourly basis. The 213(a)(1) administrative exemption does not apply to either employee (b) (7)(E)

Status of Compliance

Section 207(r)

Section 207(r)(1)(A) Insufficient Break Time- No Violation (b) (7)(E)

(b) (6), (b) (7)(C) did not report in (b) (6), (b) (7)(E) screening that (b) (6), (b) (7)(C) was not given sufficient break times to express milk as needed. Further attempts to contact the (b) (6), (b) (7)(C) were unsuccessful. Employer No

violation of Section 207(r)(1)(A) was cited.

Section 207(r)(1)(B) Insufficient Space- Violation (b) (7)(E)

Interviews with (b) (6), (b) (7)(C) revealed that employees were not provided with an adequate space to express milk. When (b) (6), (b) (7)(C) asked (b) (6), (b) (7)(C) supervisor where (b) (6), (b) (7)(C) could go to express milk (b) (6), (b) (7)(C) was told (b) (6), (b) (7)(C) could go use the locker rooms and sit at one of the tables in there. This was an open area with no privacy and when (b) (6), (b) (7)(C) informed (b) (6), (b) (7)(C) supervisor this did not meet the requirements, (b) (6), (b) (7)(C) was shown to a private bathroom. The private bathroom did not have power in it, so (b) (6), (b) (7)(C) was unable to use this, and when asking management about this issue (b) (6), (b) (7)(C) was told that dividers had been purchased to use in the locker room. (b) (6), (b) (7)(C) then used the shower area in the bathrooms to express milk because there were curtains until (b) (6), (b) (7)(C) was told this was a unsafe practice. The violation was (b) (7)(E) through employer admission by Human Resources Manager Jeremy Hagemeyer during the Initial Conference. The firm immediately came into compliance by providing larger 6ft x 6ft dividers in the women's locker room along with a table and chair. Inspection of the locker room was done to confirm that it was in compliance on the same day as the site visit. [See exhibit (b) (7)(E), C-1a for IC notes, D-3a through D3-C for photos of space].

Section 215(a)(3) Retaliation- No Violation (b) (7)(E)

There were no (b) (7)(E) of retaliation for asserting their rights under the 207(r) nor were there any (b) (7)(E) of retaliation (b) (7)(E) under 207(r).

Disposition

A final conference was held on site with Human Resources Manager Jeremy Hagemeyer and Human Resource generalist Laurie Sprague on 07/19/2018. The violations being cited were repeated to Mr. Hagemeyer and Ms. Sprague. At this time, the employers were in full compliance and all issues cited were confirmed to have previously taken place, but no longer occurring. Mr. Hagemeyer reported that as a result of the investigation they would be providing more training for line leads and more communication with employees regarding the Nursing Mother's facilities to ensure they were aware of the availability of the program. Training links from the DOL website were also sent to Ms. Sprague per her request to help provide with future training and compliance. Anti-retaliation provisions in regards to the break time provisions were also discussed with him even though violations were not cited in the case. Mr. Hagemeyer and Ms. Sprague agreed to comply going forward and will contact WHT (b) (6), (b) (7)(C) if any questions arise.

WHT (b) (6), (b) (7)(C) was unable to reach (b) (6), (b) (7)(C) to verify if (b) (6), (b) (7)(C) was satisfied with the outcome, as (b) (6), (b) (7)(C) did not return any phone calls after attempted outreach.

Publications Given: HRG, FS44, FS28D, FS73, FS77A, FMLA, FMLA Poster, FLSA Poster

Recommendation: Close Case administratively (b) (7)(E)

WHT (b) (6), (b) (7)(C)

08/14/18

Grand Rapids District Office

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1613645 Originating District: Salt Lake City UT District Office
Local Filing Number: 2011-305-05150 Investigating District: Salt Lake City UT District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 03/23/2011
Assignment Date: 03/23/2011

Employer Information

Trade Name: Brahmin Broadcasting

Legal Name: Oregon Trail Broadcasting, LLC

Address: 2109 E 10th St

EIN: 20-3286922

County: Laramie

NAICS Code: 515112

Cheyenne, WY82001

No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 04/28/2009 BNPI: 4
To: 04/27/2011 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Full Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
No Violation found for this act / Compliance (no violations found)					\$0.00	\$0.00	
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

FLSA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
Failure to keep accurate records / Agree to Comply	1	0	\$0.00	\$0.00	\$0.00	\$0.00	
Failure to Display Poster / Agree to Comply	1	0	\$0.00	\$0.00	\$0.00	\$0.00	
FLSA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	
Total Violations Under FLSA :		2					\$0.00

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
Failure to provide adequate space / Agree to Comply	1	0	\$0.00	\$0.00	\$0.00	\$0.00	
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

3(s)(1)(A), 7(r), (b) (7)(E) (b) (7)(E) the firm failed to accomandate (b) (6) under 7(r) and to pay proper OT. (b) (7)(E) no remedy imposed because did not want (b) (6) job back. No OT violation found. Violation found in section 11 of the Act. ER ATFC. Pub: HRG, 516,541, 785, 778, 793, FLSA poster FS #17B, 21, 44, &73. Rec case be adm closed w/NFA. See narrative for details. HH

WHISARD Compliance Action Report

WHI Signature: _____ Date: 07/05/2011

Reviewed By: _____ Date: _____

Oregon Trail Broadcasting, LLC
d/b/a Brahmin Broadcasting Corporation
2109 E 10th Street,
Cheyenne, WY 82001
Tel: 307-638-8921
Fax: 307-638-8922

Case File #1613645
EIN#20-3286922

FLSA Narrative

Coverage

Nature of Business: Incorporated in the State of Wyoming on July 2, 2003, Brahmin Broadcasting Corporation operates the following stations in the Cheyenne area: KJMP (AM), KRRR (FM), KRAE (AM), KMJY (FM), KANT (FM), KPAD (FM), K268BX. Brahmin Broadcasting Corporation is owned and operated by Oregon Trail Broadcasting, LLC. (C-2, C-10 to C-12)

Headquartered in 288 South River Road, Bedford, New Hampshire 03110, Oregon Trail Broadcasting, LLC operates the following radio stations/corporations in the state of Wyoming: Brahmin Broadcasting Corporation (Cheyenne), Friesland Broadcasting (Cheyenne), Appaloosa Broadcasting Company, Inc. (Laramie), Murray Grey Broadcasting (Laramie), Casper Radio Group, Inc. (Casper), Jackson Radio Group (Jackson), and White Park Broadcasting (Powell). (C-2)

Oregon Trail Broadcasting, LLC is owned by Steven Silberberg (b) (4), Edward Flanagan (b) (4), Lisa Burgess (b) (4), and J Louis Silberberg (b) (4). The corporate officers for Brahmin Broadcasting Corporation are Steven Silberberg, President/Secretary, and Edward Flanagan, vice President/Treasurer. Oregon Trail Broadcasting, LLC has 26 employees. There were approximately (b) (4) employees employed by Northeast Broadcasting Company, Inc. and Oregon Trail Broadcasting, LLC. See C-3, D-1 for Profile Pay Period, and E-1.

BNPI under Oregon Trail Broadcasting, LLC: 4 - Appaloosa Broadcasting Company, Inc. (Laramie), Murray Grey Broadcasting (Laramie), Casper Radio Group, Inc. (Casper), Jackson Radio Group (Jackson), and White Park Broadcasting (Powell). Workers working in Laramie (Appaloosa Broadcasting and Murray Grey Broadcasting) were interviewed by WHI (b) (6), (b) (7)(C) via telephone (B-7, B-8.)

Section 3(r) Enterprise: Northeast Broadcasting Company, Inc. and Oregon Trail Broadcasting,

LLC are within the meaning of this subsection; Northeast Broadcasting Company, Inc. and Oregon Trail Broadcasting, LLC performed related activities through unified operation and common controlled by the headquarter located at 288 South River Road, Bedford, NH 03110, for a common business purpose –radio stations.

Section 3(s)1(A)(i) & (ii): Since the annual gross revenues of the firm had exceeded \$500,000.00 for years 2008 through 2010 and the employees have handled goods that have moved in commerce, enterprise coverage has been established.

Annual Dollar Volume: The ADV for each of the last three years is as follow:

2008: (b) (4) (from 1120, C-11)
2009: (b) (4) (from 1120, C-12)

See C-4 to C-21 for ADV for each corporation operated by Oregon Trail Broadcasting, LLC.

Interstate Commerce:

Advertisements aired through the radio were sponsored by various companies nationwide.

Section 7(r): The firm is subject to the break time for nursing mother requirements; approximately (b) (4) employees were employed by Northeast Broadcasting Company, Inc. and Oregon Trail Broadcasting, LLC (E-1, C-3.)

Section 3(d) Employer: Steven Silberberg, Edward Flanagan, and Lisa Burgess are the employers who meet the definition of Section 3(d). Steven Silberberg, Edward Flanagan, and Lisa Burgess acted in the direct interest of the corporate entity in relation to the employees.

History: No prior compliance action with the Wage and Hour Division per information obtained from WHISARD.

MOD0: Headquartered in Bedford, New Hampshire, Oregon Trail Broadcasting, LLC has seven companies and five establishments. The Wage and Hour Manchester NH District Office is the MOD0. (b) (7)(E) (D-4)

Period of Investigation: 4/28/2009 through 4/27/2011

Section 16(b): No lawsuit filed against Oregon Trail Broadcasting, LLC or any of its corporation

under the FLSA per information obtained from initial conference.

Exemptions

13(a)(1): Subject firm paid fixed salaries to full time workers, the exemption was tested and applicable to General Manager and Sales for the investigation period.

29 C.F.R. Part 541.100: this exemption was applicable to General Manager Roger Ingram. Mr. Ingram was paid guaranteed salary of at least \$455 per week (D-2-d); his primary duty was management; he supervised two or more other employees; and, he had authority to hire and fire other workers. (B-1, B-2, B-3, B-5, B-6, B-7, B-8)

29 C.F.R. Part 541.500: Sales' primary duty was obtaining orders or contracts for services paid by the clients; and, Sales were customarily and regularly engaged away from the employer's place of business in performing her or his primary duty. This exemption was applicable to salespeople for the investigation period. (B-5)

13(b)(9): Brahmin Broadcasting is a radio station and located in Cheyenne, Wyoming, of 55714 population (D-3: Bureau of Census.) This exemption was tested and applicable to Director of Engineer and Disc Jockey for the investigation period.

§793.7 "Announcer": Disc Jockey primarily engaged in activities described in this section; this exemption was applicable to Disc Jockey (B-3.)

§793.9 "Chief Engineer": It is noted that the Federal Communications Commission no longer requires licenses to become a Chief Engineer. Director of Engineer Aaron Ishmael performed the duties described in this section. This exemption was applicable to Director of Engineer Aaron Ishmael (B-4, D-7, and D-8.)

Exemptions were not applicable to Assistant Manager (B-2,) Business Manager (B-6, B7,) and Assistant Program Director (B-8.)

Status of Compliance

Reason for Full Investigation: This investigation was initiated (b) (7)(E)

(b) (6), (b) (7)(C)

(b) (7)(E)

the firm failed to accommodate (b) with a place to express breast milk and pay proper overtime to non-exempt salaried workers (WHI-3, B-2.)

Investigation Result of (b) (6), (b) (7)(C) (b) (7)(E) of failing to comply with the 7(r) of the Act was (b) (7)(E) of failing to pay proper overtime (b) (7)(E), because the cross witness stated (b) (6), (b) (7)(C) had not worked more than 40 hours in a workweek (B-6) and (b) (6), (b) (7)(C) did not give any estimation of overtime hours worked (B-2.)

Section 6: No violation disclosed as a result of reviewing payroll records and of interviewing employees. (B, D-1, D-2)

Section 7: No overtime violation was found under this section. Employees stated they work 40 hours in a workweek. (Exhibit B, except B-2)

Section 7(r): Violation was found under this section; the firm failed to provide a place, other than a bathroom, that is shield from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk.

The violation under Break Time for Nursing Mother did not result any overtime violation; (b) (6), (b) (7)(C) worked two days after (b) (6), (b) (7)(C) returned from (b) (6), (b) (7)(C) maternity leave, which was also (b) (6), (b) (7)(C) final workweek. No remedy was imposed because (b) (6), (b) (7)(C) did not want (b) (6), (b) (7)(C) job back. (B-2, D-16 to D-19)

Section 11: Violation was found under this section; the employer failed to post the FLSA poster and maintain accurate hours worked records for non-exempt and 13(b)(9) exempt workers. (Exhibit B)

Section 12: No violation was revealed under this section as a result of discussion with the employer, the witness statements (Exhibit B), and the tour of the establishments.

Disposition

A preliminary final teleconference was held on April 6, 2011. Representing the firm was Roger Ingram, General Manager. Representing the WHD was WHI (b) (6), (b) (7)(C)

As to the violation found in section 7(r) of the Act, Mr. Ingram stated he had consulted labor board regarding this matter after (b) (6), (b) (7)(C) requested an accommodation for (b) (6), (b) (7)(C) to express (b) (6), (b) (7)(C) milk. Mr.

Ingram stated he was never given any clear instruction from the labor board and the only room without windows in the establishment was the bathroom, and thus, he asked (b) (6), (b) (7)(C) to use bathroom to express (b) (6), (b) (7)(C) milk. Mr. Ingram was advised the bathroom is not acceptable and to keep accurate hours worked records for all non exempt workers. No remedy was imposed because (b) (6), (b) (7)(C) did not want (b) (6), (b) (7)(C) job back. Nevertheless, Mr. Ingram was advised the violation is cited. (E-2)

On June 29, 2011, a preliminary final teleconference was held. Representing the firm was Lisa Burgess. Representing the WHD was WHI (b) (6), (b) (7)(C)

WHI (b) (6), (b) (7)(C) reiterated the coverage and the applicable provisions of the Act, specifically, Sections 11, 13(a)(1), and 13(b)(9). Ms. Burgess was advised of SBREFA during the initial conference on April 27, 2011.

As to the violation found in section 7(r) of the Act, Ms. Burgess stated the firm did not have 50 employees employed by Oregon Trail Broadcasting, LLC and was not subject to this requirement. Section 3(r) was explained to Ms. Burgess. Ms. Burgess stated the only room in the establishment that does not have any windows was the bathroom and the firm offered (b) (6), (b) (7)(C) the bathroom to express (b) (6), (b) (7)(C) milk. Ms. Burgess was advised that bathroom is not acceptable under this requirement.

Section 13(b)(9) was explained in details by WHI (b) (6), (b) (7)(C) Ms. Burgess was advised this exemption is only applicable to the radio stations located in the city with less than 100000 populations. Ms. Burgess stated then this exemption is not applicable to all the radio stations operated under Northeast Broadcasting Company, LLC.

Section 13(a)(1) was explained in details by WHI (b) (6), (b) (7)(C) Ms. Burgess was advised this exemption was only applicable to General Manager Roger Ingram.

As to the violation found in section 11 of the Act, Ms. Burgess agreed to keep accurate hours worked records for non exempt workers and will pay proper overtime to non exempt workers. Ms. Burgess agreed to keep accurate hours worked records for 13(b)(9) exempt workers and will ensure all 13(b)(9) exempt workers are paid at least minimum wage.

On June 30, 2011, a final teleconference was held with the owner Steve Silberberg. Mr. Silberberg was advised the Business Manager was not exempt because they did not supervise two other full time employees and the 13(b)(9) exemption is not applicable to the radio stations located in a city with more

than 100,000 populations. Mr. Silberberg agreed to future compliance that the firm will display the FLSA poster and keep accurate hours worked records for non exempt and 13(b)(9) exempt workers. (E-1)

Finally, the firm was advised of potential a civil money penalty assessment for any repeat and willful violation of the FLSA.

Recommendation:

It is recommended this case be closed administratively with no further action.

(b) (7)(E) Notification: On June 29, 2011, **(b) (6), (b) (7)(C)** was notified of the investigation result and advised of 16(b). This was done via telephone. (Diary)

Publications: the firm was provided with a copy of the Act, Handy Reference Guide, and Regulations, Parts: 516, 541, 785, and 793, Child labor 101, FLSA Poster, elaws Advisor, and Fact Sheet No. 44, 21, 17B, and 73.

All Future Correspondence goes to:

Lisa Burgess
Manager
288 South River Road,
Bedford, NH 03110
Tel: 603-668-9999
Fax: 603-668-6470

(b) (6), (b) (7)(C)

Wage and Hour Investigator
July 5, 2011

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1620527 Originating District: San Antonio TX District Office
Local Filing Number: 2011-310-00444 Investigating District: San Antonio TX District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 05/27/2011
Assignment Date: 05/27/2011

Employer Information

Trade Name: Baptist Health System

Legal Name: Baptist Health System

Address: 520 Madison Oak

EIN: 62-1861175

County: Bexar

NAICS Code: 622110

San Antonio, TX 78258

No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 01/15/2011 BNPI:
To: 06/02/2011 Reinvestigation: ☒
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Compliance (no violations found) Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
No Violation found for this act / Compliance (no violations found)					\$0.00	\$0.00	
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

(b) (6) (b) (7)(E) ER retaliated against (b) (6) for taking breaks in order to express breast milk for new born baby. (b) (7)(E)
Interviews and other evidence indicate (b) (6) was taking numerous breaks other than nursing breaks when
(b) (6), (b) (7)(C) came to hospital.

WHI Signature: _____ Date: 07/11/2011

Reviewed By: _____ Date: _____

Baptist Health System
520 Madison Oak
San Antonio, TX 78258

Tom Piszczatoski, HR Manager
210-297-4875

EIN 62-1861175
Case # 2011-310-00044

Coverage

Subject firm is a hospital. Coverage under Section 3(s)(1)(b) of the FLSA for the entire period of this investigation.

History Information: This firm has been the subject of numerous investigations. The most recent investigations of this firm were in 2009. One FLSA investigation (#1565643) resulting in no violations and two FMLA investigations (#1552530 and #1557842) in which FMLA record keeping violations were amicably resolved.

Period of Investigation: 1/15/2011-6/2/2011

Exemption

This case was limited to Section 7 (Patient Protection and Affordable Care Act) for (b) (6), (b) (7)(C) was paid on an hourly basis and no Section 7 exemptions were applicable to (b) (6) employment.

Status of Compliance

Case Assignment Information: This investigation was assigned (b) (7)(E) (b) (6), (b) (7)(C) (b) (7)(E) (b) (6), was subject to disciplinary action as a result of (b) (6) break time used to express breast milk to (b) (6) nursing infant. (b) (7)(E) (b) (6),

Section 6: Not explored due to the limited nature of this action.

Section 7: No violations (b) (7)(E) Interviews of (b) (6), (b) (7)(C) co-workers, (b) (7)(E) notes from (b) (6), (b) (7)(C) co-workers to the Director of Nursing just prior to the April write up and numerous affidavits collected by the firm for an EEOC investigation related to the termination substantiate the employer's assertion that (b) (6), (b) (7)(C) breaks for expressing milk were not at issue in (b) (6) write up and ultimate termination. (b) (6), (b) (7)(C) extended breaks taken while (b) (6), (b) (7) were present at the workplace and (b) (6) refusing to take direction from the nursing staff were the major factors leading to (b) (6) write up and ultimate termination.

Section 11: Not explored due to the limited nature of this action.

Section 12: The firm does not employ anyone under 18 years of age.

Disposition

A final conference was held by phone with Tom Piszczatoski, Director of HR, on July 11, 2011. During this conference, WHI (b) (6), (b) (7)(C) advised Mr. Piszczatoski that while no violation could be substantiated in this instance, the write up given to (b) (6), (b) (7)(C) was very suspect in that it only mentioned 'extended breaks' and not the issue of (b) (6) family being on the floor and

no answer was given to (b) (6), (b) (7)(C) written response to the write up claiming that the breaks were solely for the purpose of expressing breast milk.

(b) (7)(E) Info: A call was made to notify (b) (6), (b) (7)(C) of the outcome of this investigation on July 11, 2011. A phone message was left for (b) (6), and (b) (6), will be fully briefed on the outcome when (b) (6), returns the call. WHI (b) (6), (b) (7)(C) maintained regular contact by phone with (b) (6), (b) (7)(C) during the short duration of this action.

Recommendations: No further action is recommended.

(b) (6), (b) (7)(C)

7/11/11

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1624761 Originating District: McAllen District Office
Local Filing Number: 2011-314-00579 Investigating District: McAllen District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 07/14/2011
Assignment Date: 07/14/2011

Employer Information

Trade Name: South Texas College
Address: 3201 Pecan

McAllen, TX 78501

Legal Name: South Texas College
EIN: (b) (7)(E)
County: Hidalgo
NAICS Code: 611210
No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 02/07/2011 BNPI:
To: 06/20/2011 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: ☐ Future Compliance Agreed: ☐
Compliance Status: Compliance (no violations found) Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

WHISARD Compliance Action Report

Conclusions & Recommendations:

2hrs/ Cov: 3(s) 1(B)/Sec. 207(r)(1); Exemptions: None; (b) (7)(E) . SOC: (b) (7)(E) ER has not responded to (b) (6) request for a suitable place to express (b) (6) milk. DISP: IC/FC- Spoke to Frank Gomez- HR on 7/27/11 He stated that they are in the process in completing construction of a new a private room just for nursing mothers/waiting on door. Mr. Gomez stated the room would be completed by 8/5 . ER agrees to Comply. Called (b) (6) on 7/27/11 to inform (b) (6) of status. Mailed FC #73 to ER. NFA

WHI Signature: _____ Date: 07/27/2011

Reviewed By: _____ Date: _____

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1627965 Originating District: Little Rock AR District Office
Local Filing Number: 2011-225-08780 Investigating District: Little Rock AR District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 08/18/2011
Assignment Date: 08/19/2011

Employer Information

Trade Name: Tyson Legal Name: Tyson Foods, Inc.
Address: 3701 Johnson Road EIN: EIN Missing
Springdale, AR72762 County: Washington
NAICS Code: 311615
No. Of Employees: 0

Investigation Information

Period Investigated From: 08/15/2011 BNPI:
To: 08/24/2011 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: ☐ Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: 08/30/2011
Submit For Opinion: ☐ Trailer forms attached: ☐

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

WHISARD Compliance Action Report

Conclusions & Recommendations:

FLSNM issue. [REDACTED] travels extensively for [REDACTED] job, issue with lack of accommodations available when traveling. ER agreed to make these accommodations available for [REDACTED] for all future travel, as well as when not in travel status. [REDACTED] was advised agreement by ER and will call if further issues arise. Recommend case be concluded. WHT [REDACTED] (b) (6), (b) (7)(C), 9/7/2011, 0745 hours

WHI Signature: _____ Date: 09/07/2011

Reviewed By: _____ Date: _____

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1654893 Originating District: Dallas TX District Office
Local Filing Number: 2012-167-13056 Investigating District: Dallas TX District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 05/01/2012
Assignment Date: 05/01/2012

Employer Information

Trade Name: Quality Childcare Legal Name: Quality Childcare
Address: 3102 Courtney Lane EIN: 74-2517420
County: Bell
NAICS Code: 624410
Killeen, TX 76542 No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 04/10/2012 BNPI:
To: 05/02/2012 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Compliance (no violations found) Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

12 hours. (b) (7)(E) Named enterprise-daycare. (b) (7)(E) ER failed to provide reasonable break time and told (b) (6) to use bathroom when expressing milk. ER fired (b) (7)(E) for failing to perform duties. (b) (6), (b) (7)(E) failed to discharge diaper changing duties on time. The ER met requirements of FLSA 7(r) and agreed to continue when (b) (6) had a nursing mother as an EE. Pubs: HRG and FS 73 mailed to ER. REC: Conclude (b) (7)(E)

WHI Signature: _____ Date: 05/08/2012

Reviewed By: _____ Date: _____

Quality Childcare
3102 Courtney Lane
Killeen, TX 76542
254-690-4444

Case #: 1654893
FEIN: 74-2517420

COVERAGE

The facility, Quality Childcare, is a (b) (4) owned by Michelle Bell and managed by Molly Bluemlein, Director. Quality Childcare serves as a licensed Texas child care center, caring for infants, toddlers, pre-kindergarten, and school aged children. Quality Childcare is a 3(s)(1)(B) named enterprise under the Fair Labor Standards Act (FLSA) of 1938, as amended. The facility is located at 3102 Courtney Lane in Killeen, Texas. (See Exhibit C-1.)

Molly Bluemlein meets the definition of employer under Section 3(d) of the Fair Labor Standards Act (FLSA) in that she represented herself to be acting directly in the interest of Quality Childcare toward the employees.

There are (b) (4) employees depending on the enrollment at the facility.

Period of Investigation: April 10, 2012 – May 1, 2012

MODO: Dallas District Office.

EXEMPTIONS

Applicable: No exemptions claimed or tested.

Non-Applicable: No exemptions claimed or tested.

STATUS OF COMPLIANCE

Prior History: None

Reason for Investigation: The case was initiated (b) (7)(E) (b) (6), (b) (7)(C) (b) (7)(E) the employer failed to provide reasonable break time for expressing (b) (6) breast milk as required under the Section 7 of the Fair Labor Standards Act, as amended by the Patient Protection and Affordable Care Act which took effect on March 23, 2010. (b) (6), (b) (7)(C) (b) (7)(E) (b) (6) was fired because the employer did not have time to allow (b) (6) to go on the breaks to express (b) (6) breast milk. (b) (7)(E)

(b) (7)(E) the employer was holding (b) (6) last check. (b) (7)(E) The employer mails the last check to former employees. The employer agreed (b) (6) could pick up (b) (6) check on payday, May 2, 2012.

(b) (7)(E)

Section 6: No Violation.

Section 7: No Violation.

The requirements under 7(r) of the FLSA were specifically addressed:

- (1) An employer shall provide—
 - (A) a reasonable break time for an employee to express breast milk for her nursing child for 1 year after the child's birth each time such employee has need to express the milk; and

The employer provided a reasonable break time for the employee. Even though the employer and (b) (6), (b) (7)(C) agreed to a schedule, there is not a requirement the nursing breaks be scheduled. The requirement is for a break when needed for a reasonable amount of time. There is no indication (b) (6), (b) (7)(C) could not go on a nursing break when needed. (See Exhibits B-1 and B-3.)

(B) a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk.

(b) (6), (b) (7)(C) and the director agreed (b) (6), (b) (7)(C) could use the office/staff room for (b) (6), (b) (7)(C) breaks when expressing breast milk. (b) (6), (b) (7)(C) (b) (7) (b) (6), (b) (7)(C) was told to use the bathroom most of the time and the director says she told (b) (6), (b) (7)(C) could use the office/staff room. Another employee stated (b) (6), (b) (7)(C) used the office and she never saw (b) (6), (b) (7)(C) use the bathroom for (b) (6), (b) (7)(C) nursing break. All three indicated (b) (6), (b) (7)(C) could use the office/staff room and that it had a lockable door which could be used to make the room free from view and intrusion. (See Exhibits B-1 , B-3, E-1, E-2 and E-3.)

(2) An employer shall not be required to compensate an employee receiving reasonable break time under paragraph (1) for any work time spent for such purpose.

The employer and (b) (6), (b) (7)(C) agreed the nursing breaks were off the clock

(3) An employer that employs less than 50 employees shall not be subject to the requirements of this subsection, if such requirements would impose an undue hardship by causing the employer significant difficulty or expense when considered in relation to the size, financial resources, nature, or structure of the employer's business.

The employer agreed complying with the FLSA Section 7(r) would not impose an undue hardship on the employer. (See Exhibit B-1.)

(4) Nothing in this subsection shall preempt a State law that provides greater protections to employees than the protections provided for under this subsection.

No Texas law was preempted.

Section 11: No Violation.

Section 12: No Violation.

DISPOSITION

A final conference was held via telephone with Ms. Molly Bluemlein, Quality Childcare, Director on May 4, 2012. WHI (b) (6), (b) (7)(C) represented the Wage & Hour Division.

The investigative process, coverage, exemptions and the requirements of Sections 6, 7, 11, and 12 of the FLSA were discussed. Section 7(r) was discussed in detail.

WHI (b) (6), (b) (7) informed the employer of her responsibilities under the FLSA Section 7(r) and that the FLSA had been amended by the Patient and Affordable Care Act (PPACA) and required employers to provide reasonable break time for an employee to express breast the milk and that the employer is required to provide a place, other than a bathroom, that is shielded from view and free from intrusion from co-workers and the public, which may be used by an employee.

WHI (b) (6), (b) (7) determined the employer provided a reasonable break time for the employee. Even though the employer and (b) (6), (b) (7)(C) agreed to a schedule, there is no requirement that the nursing breaks be scheduled. The requirement is for a break when needed for a reasonable amount of time. There is no indication (b) (6), (b) (7)(C) could not go on a nursing break when needed nor was (b) (6), (b) (7) forced to return before (b) (6), (b) (7) finished expressing (b) (6), (b) (7) breast milk. (See Exhibits B-1 and B-3.)

WHI (b) (6), (b) (7) determined the employer had provided a place, other than a bathroom, for (b) (6), (b) (7)(C) use and the preponderance of evidence does not suggest (b) (6), (b) (7) was forced to use the bathroom. The employer stated meeting the requirements of Section 7(r) would not cause any undue hardship. (See Exhibits B-1, B-2, B-3, E-1, E-2 and E-3.)

The employer acknowledged she understood the requirements and said she was doing such even though she was not aware of the exact requirements of the law. WHI (b) (6), (b) (7) provided the <http://www.dol.gov/whd/nursingmothers/> web site to the employer and together they reviewed the web page and The Wage and Hour Fact Sheet #73 "Break Time for Nursing Mothers under the FLSA" The employer agreed to comply with the FLSA and said, in the future, she would go over the provisions of the law with any employee who might be covered.

The employer said (b) (6), (b) (7)(C), who had (b) (7)(E), was terminated for failing to perform (b) (6), (b) (7)(C) duties. The employer said (b) (6), (b) (7)(C), had failed to change the diapers on the children in (b) (6), (b) (7)(C) charge as required by the employer, on April 23, 2012 at 8:30 am, and the State of Texas. The employer said the state requires diapers be changed every two hours or the employer can be cited for neglect. The employer said because the employee had not changed the diapers at the time required, (8:30 am), it was neglectful and (b) (6), (b) (7)(C) was terminated and would not be rehired. The employer insisted it had nothing to do with (b) (6), (b) (7)(C) being a nursing mother. (See Exhibits B-1, B-3, E-1, E-2, E-3.)

The employer agreed (b) (6), (b) (7)(C) could pick up (b) (6), (b) (7)(C) check instead of having it mailed to (b) (6), (b) (7)(C).

Notification: (b) (6), (b) (7)(C) was notified (b) (6), (b) (7)(C) could pick up (b) (6), (b) (7)(C) check today, May 2, 2012 and notified of the results of the investigation.

Publications: The employer was provided the following publications: FS73 and WH1282.

Recommendation: Recommend the case be concluded (b) (7)(E)

ER Representative: Molly Bluemlein, 3102 Courtney Lane, Killeen, TX 76542, Phone: 254-690-4444.

(b) (6), (b) (7)(C)
Wage and Hour Investigator

Date

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1657939 Originating District: San Antonio TX District Office
Local Filing Number: 2012-310-00466 Investigating District: San Antonio TX District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 05/28/2012
Assignment Date: 05/28/2012

Employer Information

Trade Name: Harte-Hanks, Inc. Legal Name: Harte-Hanks Response
Address: 2800 Wells Branch Pkwy EIN: 74-2898255
County: Travis
NAICS Code: 561422
Austin, TX 78728 No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 11/01/2011 BNPI:
To: 06/05/2012 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☐
Compliance Status: Compliance (no violations found) Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

Limited Inv to C. Sec 3(s)1(a) Cov. (b) (6) (b) (7)(E) ER retaliated against (b) (6) for taking breaks in order to express breast milk for new born baby. (b) (7)(E) actually declined additional time offered by ER. Write up not related to nursing breaks. EE never provided any other docs proving otherwise. Rec adm close nfa.

WHI Signature: _____ Date: 09/18/2012

Reviewed By: _____ Date: _____

Harte-Hanks Response Management/Austin, Inc.
DBA: Harte-Hanks, Inc.
2800 Wells Branch Parkway
Austin, TX 78728
Point of Contact: Kristin Huber
Phone: (512) 434-1151

Case File No. 2012-310-00466
WHISARD ID: 1657939
EIN: 74-2898255

Coverage:

Subject firm offers direct telemarketing services to multiple national clients. The company receives customer calls from all over the United States. Coverage under Section 3(s)(1)(A)(i) &(ii) of the FLSA was found for the entire period of this investigation. The firm provided the Annual Dollar Volume information for the last two years:

Year 2010: (b) (4)
Year 2011: (b) (4) (See Exhibits C-2 and C-3)

History/MODO Information: The San Antonio District Office is the MODO for this company. This is the first investigation for the company.

Period of Investigation: 11/01/2011-06/05/2012

Exemption:

This case was limited to Section 7 (Patient Protection and Affordable Care Act) for (b) (6), (b) (7)(C) was paid on an hourly basis and no Section 7 exemptions were applicable to (b) (6) employment.

Status of Compliance:

This investigation was assigned (b) (7)(E) (b) (6), (b) (7)(C) (b) (7)(E) (b) (6) was subject to disciplinary action as a result of (b) (6) break time used to express breast milk during (b) (6) workday. (b) (7)(E) (See Exhibits D-1-a & D-3)

Section 6: Not explored due to the limited nature of this action.

Section 7: No violations (b) (7)(E)

The company met compliance with Section 7 (Patient Protection and Affordable Care Act) by:

- 1) Providing reasonable break time: The firm offered (b) (6), (b) (7)(C) 30 additional minutes to use each day for (b) (6), (b) (7)(C) nursing breaks; however, (b) (6), (b) (7)(C) decline the offer. (b) (6), (b) (7)(C) mentioned that (b) (6), (b) (7)(C) declined since (b) (6), (b) (7)(C) wouldn't be eligible for company benefits. Yet, the firm does state that full benefits are given to employees scheduled for at least 30 hours per week. This issue with the benefits was discussed by WHI (b) (6), (b) (7)(C) to (b) (6), (b) (7)(C) did acknowledge (b) (6), (b) (7)(C) declination of the firm's offer because (b) (6), (b) (7)(C) cannot stay 30 minutes longer at the worksite since (b) (6), (b) (7)(C) lives in San Marcos and 30 additional minutes would increase (b) (6), (b) (7)(C) commuting time. (See Exhibits B-1, D-1, and D-2)
- 2) Providing a space for nursing mothers that was a place, other than a bathroom, shielded from view, and free from intrusion from coworkers and the public: The firm does offer a room that is called the "meditation room" to allow nursing breaks. Employees are the ones that are responsible for making their scheduling arrangements. Ms. Huber stated that the company does not interfere with any breaks arrangements by the nursing mothers. Ms. Huber stated that the nursing breaks (b) (6), (b) (7)(C) was taken were not the major factors leading to (b) (6), (b) (7)(C) write up. The write up was due to the fact that (b) (6), (b) (7)(C) clocked out early in (b) (6), (b) (7)(C) shift and was reprimanded for not adhering to (b) (6), (b) (7)(C) complete schedule. (See Exhibits included in D-4)

(b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) had several e-mails from (b) (6), (b) (7)(C) supervisor reflecting negative feedback from taking several breaks during the day. However, (b) (6), (b) (7)(C) never submitted any copies that could (b) (6), (b) (7)(C) any retaliation due to the fact that (b) (6), (b) (7)(C) has taking additional nursing breaks.

There was another call made to a former nursing mother, (b) (6), (b) (7)(C) had called previously to made (b) (6), (b) (7)(C) Harte-Hanks; however, (b) (6), (b) (7)(C) was not able to give any other additional statements with details as (b) (6), (b) (7)(C) only cited that scheduling nursing breaks with the other nursing mothers was the main problem occurring during (b) (6), (b) (7)(C) employment with the company. (b) (6), (b) (7)(C) mentioned that (b) (6), (b) (7)(C) was given sufficient breaks and was allowed to use the "meditation room" whenever it was needed. (See Exhibit D-5-a)

Section 11: Not explored due to the limited nature of this action.

Section 12: The firm does not employ anyone less than 18 years of age.

Disposition

A final conference was held by phone with Mrs. Kristin Huber, HR representative (512-434-1151), on September 17, 2012. During this conference, WHI (b) (6), (b) (7)(C) advised Mrs. Huber that while no violation could be (b) (6), (b) (7)(C) in this instance, the write up given to (b) (6), (b) (7)(C) was very suspect in that it was given on the same day that (b) (6), (b) (7)(C) decline the additional 30 minutes of break time. Ms. Huber cited that this was only a

coincidence and that the company had always been open to cooperating with (b) (6), (b) (7)(C) needs. Ms. Huber cited that the write up had not been related nor even a retaliation to Ms. Huber taking breaks for the purpose of expressing breast milk.

(b) (7)(E) Info: A call was made to notify (b) (6), (b) (7)(C) of the outcome of this investigation on September 10, 2012. A phone message was left for (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) will be fully briefed on the outcome when (b) (6), (b) (7)(C) returns the call.

Recommendations: No further action is recommended.

WHI (b) (6), (b) (7)(C)
09/17/12

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1659277 Originating District: San Antonio TX District Office
Local Filing Number: 2012-310-00486 Investigating District: San Antonio TX District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 06/11/2012
Assignment Date: 06/11/2012

Employer Information

Trade Name: Spa Partisan, Inc. (Arboretum)

Legal Name: Milk & Honey Spa

Address: 9722 Great Hills Trail ste #145

EIN: 20-1444890

County: Travis

NAICS Code: 81211

Austin, TX 78755

No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 11/30/2011

BNPI:

To: 11/30/2012

Reinvestigation: ☐

Investigation Type: (b) (7)(E)

Recurring Violation: ☐

Investigation Tool: Limited Investigation

Future Compliance Agreed: ☒

Compliance Status: Agree to Comply

Involved in AG: ☐

Recommended Action:

BWFS: ☐

RO/NO Review: ☐

CMP: ☐

Follow Up Investigation: ☐

Litigation: ☐

Other Action: ☐

Civil Action: ☐

Denial of Future Certificate: ☐

Criminal Action: ☐

BW Payment Deadline:

Submit For Opinion: ☐

Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

Nursing Mothers Inv. Limited to (b) (6) Firm failed to provide adequate quarters and reasonable breaks for (b) (6) need to pump (b) (6) breast milk. FC held 8/6/2013 with Emillie Sonne, HR Dir via telecon. ER ATC

WHI Signature: _____ Date: 08/06/2013

Reviewed By: _____ Date: _____

Spa Partisan, Inc.
DBA Milk & Honey Spa
9722 Great Hills Trail Ste #145
Austin, TX 78755
(512)236-1115

Case File No. 2012-310-00479
WHSARD ID: 1658644
EIN : 20-1444890

NURSING MOTHERS NARRATIVE REPORT

Coverage:

Spa Partisans, Inc. is a nail hair and skin care salon. The firm is incorporated under the legal name of Spa Partisans, Inc DBA Milk and Honey. The firm has three establishment in addition to the corporate office. All locations are in the Austin area. The corporate office is located at 1601 E. Cesar Chavez Suite 104, Austin, TX 78701. The firm has a total of (b) (4) employees. This investigation was focused on the corporate office location. The firm is owned by Alissia Bayer (b) (4) and Shon Bayer (b) (4). The firm has been in business since January 2006. The handy reference guide was provided on the date of the initial conference.

Coverage under Section 203(s)(1)(A)(i)& (ii) of the FLSA was found for the entire period of this investigation. The firm confirmed that the annual Dollar Volume for the last three years is: (b) (4) for 2011; (b) (4) for 2010 and (b) (4) for 2009. The firm employees at least 2 employees who, handle, accept and process credit cards on a daily basis. (See Exht C1- B1-B-3)

Contact: Ms. Emilie Sonne, Human Resource Director, 1601 E. Cesar Chavez Suite 104, Austin, TX 78701.

History/MODO information: The San Antonio District Office is the MODO for this company. This is the employer's first investigation.

Period of investigation: 10/10/10 to 10/11/12.

Exemption:

This case was limited to Section 7(Patient Protection and Affordable Care Act) for (b) (6), (b) (7)(C) was paid on an hourly basis and no Section 7 exemptions are applicable to (b) (6) employment.

Status of Compliance:

(b) (7)(E) Data: (b) (6), (b) (7)(C) (b) (7)(E)

(b) (7)(E) was terminated as a result of requesting breaks to express breast milk during workday. (b) (7)(E)

Section 6: Not explored since the investigation was limited to Patient Protection and Affordable Care Act.

Section 7: The firm failed to comply with Section 7 (Patient Protection and Affordable Care Act) by:

- 1) Providing reasonable break time: The firm did not allow the employee to take breaks as needed to express breast milk. The employee was allowed to continue working at this location with the condition that sign an agreement not to take breaks. The employee could not make it without a break before started leaking and had to take a break. was written up by supervisor when was relieved by a therapist.
- 2) Providing a space for nursing mothers that was a place, other than a bathroom, shielded from view, and free from intrusion from coworkers and the public: The firm did not meet the space requirements, since the only space available for the employee was the bathroom. (b) (6), (b) (7)(C) was nursing at the hill country location. moved to the Arboretum location in January, under the supervisor, (b) (6), (b) (7)(C). This is when the problem started.

(b) (6), (b) (7)(C) informed immediate supervisor, (b) (6), (b) (7)(C) of break need to express breast milk when started working at the Arboretum location. As early as February, (b) (6), (b) (7)(C) left the front desk unattended to go express milk. Other times the therapists relieved her. was not allowed to take a break since was the only receptionist.

On or about the first week in March 2012, (b) (6), (b) (7)(C) notified Emilie Sonne, HR Director, that had researched and found out that the law required employers to provide breaks to nursing mothers. (b) (6), (b) (7)(C) continued working without breaks. The employer allowed the employee to continue working with the condition that the employee agree, in writing, to work without breaks. On April 6, 2012, the employee signed the agreement to work without a break because she needed the job. This agreement indicates that employee could only take one break on Saturday. (See Exhibit E-30)

(b) (6), (b) (7)(C) was informed that was terminated for violating company policy for allowing a stylist to cover for while expressed her milk. The employer also claimed that the employee was terminated for trading services with other therapists. The employer also claimed that the employee was not clocked out when the service was received.

Employee interviews support that company policy allowed trading services among all employee, including concierges. (See Exht B-4, B7, & B8) (b) (6), (b) (7)(C) provided copies of register records to support the company practice of trading services includes the concierge employees. (See Exhibit E1-E11)

The employee also provided copy of e-mail correspondence to support that (b) (6), (b) (7)(C) was clocked out at 7:30PM when the service was received. (See Exht D-4)

Section 11 – Not explored due to the limited nature of this action.

Section 12 – No violation found.

DISPOSITION:

(b) (7)(E)

Spa Partisan, Inc.
DBA Milk & Honey Spa
LFN: 2012-310-00486
WCID: 1659277
EIN:20-1444890

9722 Great Hills Trail Ste# 145
Austin, YX 78755
(512)236-1115

FLSANM NARRATIVE

COVERAGE:

Nature of Business: The subject firm is one of three hair, nail, and skin care salons located in Austin, TX.

Organization of Business: Throughout the investigation the firm was operating as Spa Partisan, Inc. and DBA Mink and Honey. The firm was incorporated in January 2006 and employees a total of (b) (4) employees. FLSNM (b) (7)(E) was received in reference to the firm's corporate office located at 1601 E. Cesar Chavez Ste. 104 Austin, TX 78701.

Annual Dollar Volume (ADV): The Annual Dollar Volume for the subject firm for the previous three years is: (b) (4) (2011); (b) (4) (2010); and (b) (4) (2009).

Enterprise Coverage: Enterprise coverage under Sec. 3(s)1(A) of the FLSA applies for the entire investigative period. At least two or more employees process credit card payments made by customers.

Period of Investigation: The investigation period was from 10/10/2012 to 10/11/2012. This investigation was conducted by WHI (b) (6), (b) (7)(C) of the Austin TX Area Office and assigned on 4/2/2013 to (b) (6), (b) (7)(C) of the San Antonio District Office for Wage and Hour.

Reason for Investigation: This investigation (b) (7)(E) (b) (6), (b) (7)(C) worked at the establishment as a Receptionist. (b) (6), (b) (7)(C) (b) (7)(E) the employer failed to provide (b) (6), (b) (7)(C) with reasonable break time or a space to express milk.

Employment Relationship Sec. 3(d) Ms. Emilie Sonne, Human Resources Director of the subject firm meet the definition under Section 3(d) of the FLSA of an employer in relation to the employee. It has been determined that an employer-employee relationship exists due to the performance the individual's supervision of employees and management of the business (**see exhibit-C-1 & C-2**).

MODO: The San Antonio District Office is the MODO for this firm. No special instructions apply.

EXEMPTIONS: This case was limited to Section 7 (Patient Protection and Affordable Care Act) for (b) (6), (b) (7)(C) was paid on an hourly basis and no Section 7 exemptions were applicable to her employment.

STATUS OF COMPLIANCE:

Investigative History: A search in WHISARD indicated the firm has had no prior FLSA investigations at this location.

(b) (7)(E) **Information:** This investigation (b) (7)(E) (b) (6), (b) (7)(C) (b) (7)(E) the employer failed to provide (b) (6), (b) (7)(C) with reasonable break time or a space to express milk and that disciplinary actions (including termination) were taken against (b) (6), (b) (7)(C) due to taking breaks as needed to express milk. (b) (7)(E)

Section 6: Not explored due to the limited nature of this action.

Section 7: Violations were found with Section 7 (Patient Protection and Affordable Care Act) due to:

3) Providing reasonable break time:

(b) (6), (b) (7)(C) (b) (7)(E) the employer “pressured” (b) (6), (b) (7)(C) to stay at the desk therefore (b) (6), (b) (7)(C) did not receive adequate break time to express. The employee was not allowed to take breaks before (b) (6), (b) (7)(C) started having complications. (b) (6), (b) (7)(C) was able to express at the Hill Country location,

but when (b) (6), (b) (7)(C) moved to the Arboretum in January for personal convenience (b) (6), (b) (7)(C) was not relieved of (b) (6), (b) (7)(C) duties as needed to afford for the necessary breaks for nursing. (See **Exhibit E-3(a)**).

(b) (6), (b) (7)(C) (b) (7)(E) (b) (6), (b) (7)(C) was written up for taking breaks by (b) (6), (b) (7)(C) supervisor when (b) (6), (b) (7)(C) was relieved by therapists. This was not substantiated through employee interview statements and review of documentation provided by the employer.

- 4) Providing a space for nursing mothers that was a place, other than a bathroom, shielded from view, and free from intrusion from co-workers and the public: (b) (6), (b) (7)(C) (b) (7)(E) the firm allowed (b) (6), (b) (7)(C) to use the spa room to express only when not in use by a client otherwise is was necessary for (b) (6), (b) (7)(C) to use the restroom . The firm did not meet the space requirements since the only space available for the employee was the restroom. (See **Exhibit E-10**).

(b) (6), (b) (7)(C) states that (b) (6), (b) (7)(C) informed (b) (6), (b) (7)(C) immediate supervisor, (b) (6), (b) (7)(C), in early February 2012 verbally of (b) (6), (b) (7)(C) need to express milk and informed Emilie Sonne, HR Director in March of 2012. (See **Exhibit B-3**).

4/6/2012 (b) (6), (b) (7)(C) signed an agreement with (b) (6), (b) (7)(C) employer outlining (b) (6), (b) (7)(C) work hours and implementing set breaks for nursing. The agreement indicated (b) (6), (b) (7)(C) would only take breaks daily. Work on Sunday indicated a 7 hours shift with no break. (b) (6), (b) (7)(C) states that (b) (6), (b) (7)(C) signed the agreement in order to maintain employment. (See **Exhibit E-8(e)**).

Section 11: Not explored due to the limited nature of this action.

Section 12: Not explored due to the limited nature of this action.

Section 15(a)(3): Explored in case #1658664. (b) (6), (b) (7)(C) (b) (7)(E) was told (b) (6), (b) (7)(C) was terminated in May of 2012 for violating a company policy for trading services with other therapists. Based on Employer data (b) (6), (b) (7)(C) had scheduled (b) (6), (b) (7)(C) for a manicure/pedicure blocking out the co-worker's schedule in which (b) (6), (b) (7)(C) may have received further business. Through a review of time records it was found that (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) was still clocked in and considered working while receiving the service. The employer provided sales documentation showing (b) (6), (b) (7)(C) did not pay for the product portion as required until 5/2/2013 after being approached by management. (b) (6), (b) (7)(C) was terminated on 05/04/2013 (See exhibit D-9).

DISPOSITION: A final conference was held with on 8/6/2013 with Emilie Sonne, Human Resources Manager for the subject firm, via teleconference. Wage and Hour was represented by WHI (b) (6), (b) (7)(C). During this conference, employer was told that enterprise coverage under Sec. 3(s)1(A)ii of the FLSA applies for the entire investigative period for the company for the following reasons: At least two employees handle goods that have traveled through interstate commerce including but not limited to cosmetic products and the use of credit/debit card machines.

WHI (b) (6), (b) (7)(C) explained the requirements under The Patient Protection and Affordable Care Act (“Affordable Care Act”) Sec 7 FLSA Nursing Mothers. (b) (7)(E)

(b) (6), (b) (7)(C) WHI (b) (6), (b) (7)(C) reminded the employer that the company must continue to cooperating with any employees needs for the purpose of expressing breast milk within the requirements of the act.

Coverage: under the FLSA was discussed with the employer. The employer was told that enterprise coverage under Sec. 3(s)1(A)ii of the FLSA applies for the entire investigative period for the company for the following reasons: At least two employees handle goods that have traveled through interstate commerce including but not limited to cosmetic products and the use of credit/debit card machines.

Exemptions: Possible exemptions from The Patient Protection and Affordable Care Act (“Affordable Care Act”) Sec 7 FLSA Nursing Mothers were discussed with Ms. Sonne.

Minimum wage: No violations found.

Overtime: No violations found.

Nursing Mothers: The firm failed to provide a space for nursing mothers other than a bathroom, shielded from view, and free from intrusion from co-workers and the public. Through a tour of the establishment and employee interview statements it was found that (b) (6), (b) (7)(C) was required to use the spa room to

express only when not in use by a client otherwise it was necessary for her to use the restroom . The firm did not meet the space requirements since the only space available for the employee was the restroom.

Record Keeping: No violations found.

Child Labor: No violations found.

Corrective Action Taken/Future Compliance: Ms. Emilie Sonne agreed on behalf of the firm to maintain compliance on 8/6/2013. The employer stated she will stay in compliance by doing taking the following actions:

Providing adequate time and location for breaks as required under the Patient Protection and Affordable Care Act ("Affordable Care Act") Sec 7 FLSA Nursing Mothers. (See Exhibit E-1).

(b) (6), (b) (7)(C) notification: WHI **(b) (6), (b) (7)(C)** had attempted to contact **(b) (6), (b) (7)(C)** via telephone on 8/6/2013 informing her of the investigation outcome.

Publications provided: The Handy Reference Guide to the Fair Labor Standards Act (SBREFA), Fact Sheet #44, Fact Sheet #73, and DOL website were provided to the employer at the initial conference held on 2/25/2013.

Recommendations/CMPs: **(b) (7)(E)**
(b) (6), (b) (7)(C) I recommend this investigation be closed administratively with no further action.

(b) (6), (b) (7)(C)
Wage & Hour Investigator
8/6/2013

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1659710 Originating District: Oklahoma City District Office
Local Filing Number: 2012-273-01307 Investigating District: Oklahoma City District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 06/14/2012
Assignment Date: 06/29/2012

Employer Information

Trade Name: Car-Mart of Enid Legal Name: America's Car-Mart, Inc.
Address: 4802 West Owen K. Garriott Road EIN: 71-0791606
County: Garfield
NAICS Code: 441120
Enid, OK 73703 No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 02/15/2012 BNPI:
To: 07/10/2012 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

FMLA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FMLA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

Limited Inv of sec 7(r). Vio ^{(b)(7)(E)} thru EE interviews, no remedy avail. ^{(b)(7)(E)} is no longer expressing breast milk, no longer needs break time. ^{(b)(7)(E)} not denied break time or OT. ^{(b)(7)(E)} was harassed by manager about length of break time. Manager terminated by ER for reasons not related to investigation. ER ATC with all areas of the FLSA in the future. Recommend administrative closure.

WHI Signature: _____ Date: 08/08/2012

Reviewed By: _____ Date: _____

Car-Mart of Enid Case ID: 1659710

Case ID # 1659710

CAR-MART of Enid

4802 West Owen K. Garriott Road
Enid, OK 73703
(580)234-4118

America's CAR-MART, Inc.

802 S. E. Plaza Ave. Suite 200
Bentonville, AR 72712
(479)418-8022
Fax (479)273-7556
<http://www.car-mart.com/>

FEIN # 71-0791606

Coverage

The subject firm owns and operates 116 used car dealerships in Arkansas, Alabama, Oklahoma, Mississippi, Missouri, Kentucky, Indiana, Tennessee, and Texas. The firm was founded on 10/02/1989 in Arkansas. Mr. Don Naught is the Director of Human Resources and represented the company throughout the investigation. The company is publicly traded. See exhibit C-2 for a list of corporate officers.

The annual dollar volume (ADV) for 2011, 2010 and 2009 was (b) (4) respectively. All employees handle goods that moved in interstate commerce, such as cars of various makes, office supplies and credit card transaction receipts. Enterprise coverage applies to all employees (EEs) under FLSA, Section 3(s) (1) (A). See exhibits C1 and C6.

Section 7(r)

The firm is subject to the break time for nursing mother requirements; over (b) (4) employees are employed by CAR-MART in 116 locations throughout Arkansas, Alabama, Oklahoma, Mississippi, Missouri, Kentucky, Indiana, Tennessee, and Texas.

MODO

Little Rock, AR DO is the MODO. (b) (7)(E)

See exhibit D0.

History

Case ID #

1625041
1533223
1528263
1260363

No FLSNM history.

Exemptions and Limitations

This case was limited to Section 7(r) of the FLSA (Patient Protection and Affordable Care Act) for (b) (6), (b) (7)(C) [REDACTED] was paid on an hourly basis and no Section 7 exemptions were applicable to (b) (6) [REDACTED] employment.

Status of Compliance

The period of investigation was from 02/15/2012 through 07/10/2012. The case was initiated (b) (7)(E) [REDACTED] (b) (6), (b) (7)(C) [REDACTED] claiming the general manager/employer (ER) was harassing (b) (6), (b) (7)(C) [REDACTED] about taking too long of breaks to express breast milk. (b) (6), (b) (7)(C) [REDACTED] stated (b) (6), (b) (7)(C) [REDACTED] needed the breaks to express breast milk for (b) (6), (b) (7)(C) [REDACTED] four month old child. (b) (7)(E) [REDACTED], but no remedy was available.

WHI held an initial conference (IC) on 07/16/2012, interviewed (b) (6), (b) (7)(C) [REDACTED] co-workers and conducted a records check to (b) (7)(E) [REDACTED] if (b) (6), (b) (7)(C) [REDACTED] had been denied any OT pay. (b) (6), (b) (7)(C) [REDACTED] was not working on the day of the IC. WHI had (b) (7)(E) [REDACTED] to use (b) (6), (b) (7)(C) [REDACTED], but did not disclose the reason for the investigation to the ER since (b) (6), (b) (7)(C) [REDACTED] was still a current EE. Interviews of (b) (6), (b) (7)(C) [REDACTED] co-workers revealed that (b) (6), (b) (7)(C) [REDACTED] had stopped expressing breast milk and no longer had a need for the break time. The interviews also disclosed that the ER was harassing her about the length of time needed for the breaks to express breast milk, but no retaliation violations could be substantiated. (b) (6), (b) (7)(C) [REDACTED] was not denied break time, overtime pay, (b) (6), (b) (7)(C) [REDACTED] and had no disciplinary actions against (b) (6), (b) (7)(C) [REDACTED] relating to the break time for expressing breast milk. WHI confirmed that (b) (6), (b) (7)(C) [REDACTED] was no longer expressing breast milk on 07/26/2012. (b) (6), (b) (7)(C) [REDACTED] stated that (b) (6), (b) (7)(C) [REDACTED] had stopped producing breast milk and no longer needed the breaks. (b) (6), (b) (7)(C) [REDACTED] also stated that the general manager was terminated on 07/23/2012 and (b) (6), (b) (7)(C) [REDACTED] was terminated on 07/24/2012. (b) (6), (b) (7)(C) [REDACTED] was told (b) (6), (b) (7)(C) [REDACTED] was terminated for insubordination because of publically arguing with the general manager. On 07/25/2012 (b) (6), (b) (7)(C) [REDACTED] stated (b) (6), (b) (7)(C) [REDACTED] was offered (b) (6), (b) (7)(C) [REDACTED] job back from the corporate office. (b) (6), (b) (7)(C) [REDACTED] stated they called (b) (6), (b) (7)(C) [REDACTED] approximately six times in two days begging (b) (6), (b) (7)(C) [REDACTED] to come back to work. (b) (6), (b) (7)(C) [REDACTED] stated (b) (6), (b) (7)(C) [REDACTED] was not interested in going back to work for the ER. See exhibits A 0, B 1-5 and Case Diary.

Section 6

Not explored due to the limited nature of this action.

Section 7

No violations (b) (7)(E).

Section 11

Not explored due to the limited nature of this action.

Section 12

No violations found. The ER stated company policy is not to hire any EEs under the age of 18 years.

Disposition

The final conference was held on 08/08/2012 with Mr. Naught and WHI (b) (6), (b) (7)(C) via telephone. WHI (b) (6), (b) (7)(C) explained no violations of the FLSA were found and asked if Mr. Naught had any further questions. Mr. Naught stated that he did not have any further questions and agreed the firm would continue to comply with the FLSA.

During the final conference WHI (b) (6), (b) (7)(C) mentioned the possibility of CMP's being assessed if there were willful violations found in a future investigation. Recommend administrative closure of this case with no further action.

WHI informed the C on 08/08/2012 of the results of the investigation and conducted a follow up phone interview to confirm facts and dates. WHI told (b) (6), (b) (7)(C) that since (b) (6), (b) (7)(C) had stopped expressing breast milk and was not interested in (b) (6), (b) (7)(C) job back there was no remedy. (b) (6), (b) (7)(C) inquired if there was any monetary action (b) (6), (b) (7)(C) could take regarding wrongful termination. WHI informed (b) (6), (b) (7)(C) that was out of the WH's scope of enforcement.

WHI provided HRG, 541, 785, 516, CL 101, OT non-technical and applicable fact sheets including the FLSNM fact sheet at the initial conference. WHI also directed Mr. Naught to WHD's website for future questions.

Future Correspondence

Mr. Don Naught, Director of Human Resources
802 S. E. Plaza Ave. Suite 200
Bentonville, AR 72712
(479)418-8022

WHI (b) (6), (b) (7)(C)
08/08/2012

Car-Mart of Enid Case ID: 1659710

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1662501 Originating District: Denver CO District Office
Local Filing Number: 2012-174-08811 Investigating District: Denver CO District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 07/13/2012
Assignment Date: 07/13/2012

Employer Information

Trade Name: Village Inn Restaurant
Address: 1837 Fremont Drive

Canon City, CO81212

Legal Name: Village Inn Family Restaurant, Inc.
EIN: 26-4371224
County: Fremont
NAICS Code: 722110
No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 02/11/2012 BNPI:
To: 08/02/2012 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

(b) (6) Case; Ent coverage: Sec. 7 Patient Protection and Affordable Care Act (PPACA) ER failed to provide adequate break time to express (b) (6) breast milk for (b) (6) nursing 5 1/2 month child. On 10-1-12 FC w/Robin Kane, Vice President of Human Resources-American Blue Ribbon Holdings, LLC, Bob Feldman-Regional Manager-Village Inn & Megan Huffnagle-Regional Human Resource Manager-Village Inn; ER ATFC by providing training to their restaurant Managers in the topic of accommodations for nursing mothers.

WHI Signature: _____ Date: 10/04/2012

Reviewed By: _____ Date: _____

EIN:	26-4371224		
Investigated	Village Inn Restaurant	Phone	719-275-7113
Location:	1837 Fremont Dr.	Fax:	
	Canon City, Colorado 81212		www.villageinn.com
Corporate	Village Inn Family Restaurant, Inc 400 West 48 th Ave.	Phone	303-296-2121
Office:	Denver, CO 80216		
Parent Company:	American Blue Ribbon 3038 Sidco Drive Nashville, TN 37204		
Send future correspondence to:			
Representative	Megan Huffnagle	Phone	303-672-2112
	Regional Human Resources Manager	Fax:	303-672-6203
	400 West 48 th Ave. Denver, CO 80216		
	Megan.huffnagle@abrholdings.com		

COVERAGE

Village Inn Restaurant has been business since 19 with employees all over the U.S. The firm's legal name is: Village Inn Family Restaurant, Inc and their corporate office is located at: 400 West 48th Ave., Denver, CO 80216. The firm's parent company is American Blue Ribbon Holdings LLC with the same EIN. The parent company was incorporated on 12-23-08 in the state of Delaware. Corporate Officers are: Hazem Ouf-Chief Executive Officer, Anita Adams-Chief Financial Officer & Goodloe Partee-General Counsel and Secretary. (See Exhibit C-2). The parent company is in the process of moving their corporate office to: 3038 Sidco Dr., Nashville, TN 37204, however Village Inn Family Restaurant Inc., will maintain their corporate address. The firm is a full service restaurant opened to general public serving pancakes, omelets, hamburgers, salads & other specialties meals. The firm has 125 Village Inn Restaurants within the U.S. and has more than (b) (4) employees. The firm currently employs (b) (4) employees at their Canon City, CO location. This location opened June 7, 1984. There are 33 locations in Colorado.

All employees are covered under Section 3(s) (1) (a) of the FLSA enterprise coverage during the period of investigation of 2-11-12 to 8-2-12. The annual dollar volume for each of the past three years are as follows: 2009 was (b) (4), for 2010 was (b) (4) & (b) (4) for 2012 and more than two employees regularly handle goods that move in interstate commerce. Employees use pencils, telephones, menus and chairs which have moved in interstate commerce. (See exhibit C-1).

On 8-2-12 a copy of “Handy Reference Guide to the Fair Labor Standards Act” was provided to Megan Huffnagle-Regional Human Resource Manager & Bob Feldman-Area Manager.

The employer's established workweek is Monday to Sunday. Employees are paid on a weekly basis on Fridays. Prior to July 23, 2012, the firm paid on a bi-weekly basis & workweek was Friday to Thursday.

The employer is not aware of any collective action under 16(b) of the FLSA being brought against the firm.

3(d) employer: Bob Feldman is a 3(d) employer. He acts directly in the interest of an employer in relation to the overall management and employment practices of the firm. Mr. Feldman is the Area manager who hires and fires for this location.

(b) (7)(E)

2)

. (See exhibit D-1 &

EXEMPTIONS

Section 7 (Patient Protection and Affordable Care Act) was found applicable:

- I. The enterprise has more than (b) (4) employees. The enterprise is not exempt from the Patient Protection and Affordable Care Act. (See exhibit C-1)
- II. (b) (6), (b) (7)(C) was paid on an hourly basis and no Section 7 exemptions are applicable to her work. (See exhibit B-2)
- III. This compliance review did not address the exempt status of the corporate officers or managers. All other employees are paid on an hourly basis. (See exhibit C-1)

STATUS OF COMPLIANCE

This limited investigation (b) (7)(E) (b) (6), (b) (7)(C) (b) (7)(E) the

firm failed to provide adequate break time to express (b) (6) breast milk for her nursing (b) (6), (b) (7)(E) child. (b) (7)(E) (See exhibit B-1, 2)

Violation Summary: A FLSA Section 7 of the requirement for nursing mothers in the Patient Protection and Affordable Care Act (PPACA) occurred when a reasonable break time was not provided to the nursing mother.

History: Firm has history.

An FLSA investigation in the Denver District from office 5-6-03 to 5-5-05 disclosed (b) (7)(E) (#124493)

A directed CL investigation in the Phoenix District Office from 5-6-03 to 5-5-05 disclosed no violations. (#1400824)

An FLSA investigation in the Albuquerque, District Office from 2-15-04 to 2-11-06 found minimum wage violation for 51 employees. There were 51 employees found due \$4,614.40. The firm agreed to pay and agreed to future compliance. (#1420453)

There are many other Village Inn Restaurant in the system but not sure if they are part of this corporation. (See exhibit D-3a to 3c)

Violations noted:

FLSA, Section 6, Minimum Wage: No violation noted.

FLSA, Section 7, nursing mothers in the Patient Protection and Affordable Care Act (PPACA):

The employer failed to provide one nursing mother the adequate break time to express (b) (6) breast milk for (b) (6) nursing (b) (6), (b) (7)(C) child. Although, (b) (6), (b) (7)(C) was allowed to express (b) (6), (b) (7)(C) breast milk when needed there were several instances when (b) (6), (b) (7)(C) was made to wait or not allowed to express (b) (6), (b) (7)(C) breast milk due to lack of staff coverage. Since (b) (6), (b) (7)(C) was unable to take (b) (6), (b) (7)(C) break to express (b) (6), (b) (7)(C) breast milk, (b) (6), (b) (7)(C) milk supply decreased, affecting (b) (6), (b) (7)(C) ability to produce sufficient milk for (b) (6), (b) (7)(C) infant. Thus, (b) (6), (b) (7)(C) was not able to express (b) (6), (b) (7)(C) breast milk at the time of need. The Area Manager-Bob Feldman stated the following:

1. He was not aware of this complaint until July 27, 2012 he received the appointment letter from the U.S. Department of Labor Wage & Hour Division. Mr. Feldman stated it was his understanding that (b) (6), (b) (7)(C) asked (b) (6), (b) (7)(C) - Manager if (b) (6), (b) (7)(C) could express (b) (6), (b) (7)(C) breast milk and (b) (6), (b) (7)(C) asked (b) (6), (b) (7)(C) if it was ok that (b) (6), (b) (7)(C) wait until work slowed down and (b) (6), (b) (7)(C) said "OK." Unfortunately, (b) (6), (b) (7)(C) forgot and never got back with (b) (6), (b) (7)(C) and asked if (b) (6), (b) (7)(C) was ready to express (b) (6), (b) (7)(C) breast milk. After awhile the p.m. manager (b) (6), (b) (7)(C) came on shift and was told of the incident. (b) (6), (b) (7)(C) allowed (b) (6), (b) (7)(C) to express (b) (6), (b) (7)(C) breast milk. Additionally, Mr. Feldman stated he was not aware that (b) (6), (b) (7)(C) was not allowed to take (b) (6), (b) (7)(C) break at the time of need.

2. (b) (6), (b) (7)(C) -Store Manager was on vacation on the day of the incident. (b) (6), (b) (7)(C) returned to work the day after the incident. (b) (6), (b) (7)(C) informed (b) (6), (b) (7)(C) of the situation and (b) (6), (b) (7)(C) immediately addressed the situation that same day with (b) (6), (b) (7)(C) made it very clear to (b) (6), (b) (7)(C) that any time that (b) (6), (b) (7)(C) or any employee's request to express their breast milk they are to be allowed immediately. (b) (6), (b) (7)(C) apologized to (b) (6), (b) (7)(C) and the next day apologized to (b) (6), (b) (7)(C). Additionally, both (b) (6), (b) (7)(C) spoke to (b) (6), (b) (7)(C) and informed (b) (6), (b) (7)(C) that in the future they will facilitate (b) (6), (b) (7)(C) need to express (b) (6), (b) (7)(C) breast milk.

(b) (6), (b) (7)(C) assured Mr. Feldman that (b) (6), (b) (7)(C) had taken care of this problem upon (b) (6), (b) (7)(C) return to work.

Mr. Feldman stated they were aware of this law and of its requirements. Employer pays overtime at time and one half & tipped employees are paid correctly in overtime work weeks.

FLSA, Section 11, Recordkeeping: No violation noted.

FLSA, Section 12, Child Labor: Firm does not employ anyone under the age of 18 at this location.

DISPOSITION

On 10-1-12 final conferences was held via telephone with Robin Kane, Vice President of Human Resources-American Blue Ribbon Holdings, LLC, Bob Feldman-Regional Manager-Village Inn & Megan Huffnagle-Regional Human Resource Manager-Village Inn. WHI (b) (6), (b) (7)(C) represented the Wage Hour.

Ms. Huffnagle stated the firm was not aware of this violation until July 27, 2012 when the Area Manager Bob Feldman received the appointment letter from our office. Ms. Huffnagle states they have worked extensively in educating their local managers of their responsibilities regarding this law. Additionally, the firm took immediate action upon their knowledge that (b) (6), (b) (7)(C) was not allowed to express (b) (6), (b) (7)(C) breast milk and allowed (b) (6), (b) (7)(C) to express (b) (6), (b) (7)(C) breast milk.

Ms. Huffnagle stated the firm agrees to comply in the future by providing training to their restaurant Managers in the topic of accommodations for nursing mothers. The firm will send the updated slides regarding nursing mothers (14 & 15) to all General Managers to review with their management teams immediately. Accommodations for nursing mothers will be presented in annual HR Management Training and incorporated/updated in the e-learning presentation. The firm will monitor compliance by asking questions of management during store visits. (See exhibit D-12b)

Furthermore, Ms. Huffnagle was informed of the possibility of civil money penalties. Ms. Huffnagle agrees to future compliance.

Publication provided: HRG, Fact Sheet # 73, Part 785.18 & 785.19.

(b) (6), (b) (7)(C) On 10-3-12 (b) (6), (b) (7)(C) was notified of the outcome of the investigation via telephone.

RECOMMENDATION:

Recommend case be closed (b) (7)(E) .

(b) (6), (b) (7)(C)
Wage & Hour Investigator
10-4-12

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1671099 Originating District: Dallas TX District Office
Local Filing Number: 2013-167-13651 Investigating District: Dallas TX District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 10/02/2012
Assignment Date: 10/02/2012

Employer Information

Trade Name: Tandy Brands Accessories, Inc. Legal Name: Tandy Brands Accessories, Inc.
Address: 3631 West Davis Street EIN: 75-2349915
County: Dallas
NAICS Code: 339999
Dallas, TX 75211 No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 09/27/2010 BNPI:
To: 09/23/2012 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

35 hrs. 3(s)(1)(A) ent. cov. (b) (7)(E) No exemptions applicable to (b) (7)(E) Viol. found under sec. 7, FLSNM provision. ER did not provide adequate space to express milk. ER came into compliance immediately following IC. FC held 11/28/12. ER agreed to future compliance. (b) (7)(E) verified ER compliance 10/30/12. Recommend admin. closing/no further action. Pubs: HRG, FS #44 & FS #73.

WHI Signature: _____ Date: 11/29/2012

Reviewed By: _____ Date: _____

Tandy Brands Accessories, Inc.
d/b/a: Tandy Brands Accessories, Inc.
3631 W. Davis St., Suite A
Dallas, TX 75211
Phone: (214) 519-5200
FEIN: 75-2349915

FLSNM Narrative

Case Assignment Information: This case was assigned (b) (7)(E) (b) (6), (b) (7)(C) (b) (7)(E) the employer failed to provide adequate space to express milk. (b) (6), (b) (7)(C) (b) (7)(E) (Ex. D-6a). A limited investigation was conducted.

COVERAGE: Subject establishment is a distribution center that supplies small leather goods and accessories to major companies for resale. The legal name of the business is Tandy Brands Accessories, Inc. The establishment is part of an enterprise which includes 4 locations, 2 of which are temporary. Addresses for the 2 permanent locations are as follows: the above listed location which is the corporate office; and 3890 La Reunion Pkwy, Dallas, TX 75212. Addresses for the 2 temporary locations are as follows: 3560 La Reunion Pkwy, Dallas, TX 75212; and 4051 La Reunion Pkwy, Dallas, TX 75212. The 2 temporary locations were leased during peak season September of 2012; and they are anticipated to close November of 2012. The business was incorporated 11/1/90 in Delaware. The executive officers are as follows: President and Chief Executive Officer, N. Roderick McGeachy, III; Executive Vice President, Gifts Division and Accessories Sales, Robert J. McCarten; and Corporate Vice President and Chief Financial Officer, Chuck Talley. Distribution Center Human Resources (HR) manager, Gloria Salmeron meets the definition of 3(d) employer as she oversees all aspects of the daily business operations, including employment issues related to hiring, firing, promotion and rates of pay.

The annual dollar volume for the past three years is as follows (Ex. C-1 & D-4c):

2011 (b) (4)

2010
2009

(b) (4)

Section 3(s)(1)(A) enterprise coverage applies to all employees throughout the investigative period of 9/27/10-9/23/12. The annual dollar volume exceeds \$500,000, the establishment employs two or more employees, and the employees handle small leather goods, tabletop games/gifts & accessories that have been produced for interstate commerce.

History/MODO: A WHISARD search revealed no previous history of investigations. The MODO for this employer is the Dallas District Office (Ex. D-1).

16(b) status: There were no pending 16(b) actions as indicated by HR manager, Gloria Salmeron during the initial conference on 10/5/12.

EXEMPTIONS:

Applicable:

Section 13(a)(1):

541.200

Import Coordinator, (b) (6), (b) (7)(C) (b) (7)(E) that (b) (6), (b) (7)(C) exercised (b) (6), (b) (7)(C) rights under the FLSNM provision. (b) (6), (b) (7)(C) receives a weekly salary of (b) (6), (b) (7)(C) indicated that (b) (6), (b) (7)(C) duties require (b) (6), (b) (7)(C) to exercise discretion and independent judgment as well as work directly with the employer's customers. Although (b) (6), (b) (7)(C) exercised (b) (6), (b) (7)(C) rights under the FLSNM provision, the requirements do not apply to (b) (6), (b) (7)(C) due to (b) (6), (b) (7)(C) exempt status (Ex. B-1).

Inapplicable:

Section 7(r)(3):

The employer employs more than 50 employees, and therefore the exemption is not applicable.

Section 13(a)(1):

541

(b) (6), (b) (7)(C) is a quality control auditor paid at a rate of **(b) (6), (b) (7)(C)** per hour. **(b) (6), (b) (7)(C)** does not meet any exemptions, and therefore the requirements under the FLSNM provision are applicable (Ex. B-2).

STATUS OF COMPLIANCE:

Section 6–Minimum Wage: No violations found.

Section 7–Overtime: No violations found.

Section 7–FLSNM:

Location: A violation occurred when the employer did not provide adequate space for **(b) (6), (b) (7)(C)** to express milk. The employer suggested that **(b) (6), (b) (7)(C)** express milk in the bathroom. **(b) (6), (b) (7)(C)** refused the employer's suggestion, and decided to express milk in **(b) (6), (b) (7)(C)** vehicle instead (Ex. B-2 & C-1).

Time: **(b) (6), (b) (7)(C)** also **(b) (7)(E)** the employer indicated **(b) (6), (b) (7)(C)** break time for expressing milk should be restricted in terms of frequency and duration. **(b) (6), (b) (7)(C)** did not indicate any disciplinary consequences for exceeding the **(b) (7)(E)** time limits proposed by the employer. The employer denied these **(b) (7)(E)** and stated that **(b) (6), (b) (7)(C)** was only informed that **(b) (6), (b) (7)(C)** would not be paid for breaks taken to express milk. **(b) (7)(E)** **(b) (6), (b) (7)(C)** for failure to provide reasonable amount of time to express milk (Ex. B-2 & C-1).

Section 11–Recordkeeping: No violations found.

Section 12–Child Labor: No violations found as the employer did not hire employees under the age of 18.

DISPOSITION:

During the initial conference on 10/5/12, WHI (b) (6), (b) (7)(C) informed Distribution Center HR Manager, Gloria Salmeron and Inventory Quality Control Manager, Regulo Barajas that a violation was found under the FLSNM provision. Specifically, WHI (b) (6), (b) (7)(C) stated that the employer failed to provide a permissible location (as defined by the law) to (b) (6), (b) (7)(C) to express milk. Salmeron and Barajas were advised that the violation would need to be corrected immediately. Salmeron stated that she had a previous discussion with corporate office officials and was able to locate a space for (b) (6), (b) (7)(C) to express milk. After viewing the space, which is a vacant office, it was determined that the location meets the requirements of the law.

WHI (b) (6), (b) (7)(C) held a final conference at the establishment on 11/28/12 with Corporate HR Supervisor, Sue Elliott and Distribution Center HR Manager, Gloria Salmeron. The laws enforced under the FLSA were explained, as well as the requirements for enterprise and individual coverage. WHI (b) (6), (b) (7)(C) informed Ms. Elliott and Ms. Salmeron of the requirements under sections 6, 7, 11 and 12. Ms. Elliott and Ms. Salmeron were advised that violations were found under section 7, FLSNM provision.

Ms. Elliott and Ms. Salmeron stated that violations were corrected immediately following the initial conference. Ms. Elliott stated that the violations occurred due to lack of communication to all employees, regarding the available space for nursing mothers to express milk. Ms. Elliott stated that the available space is an office that is now reserved for nursing mothers only. Elliott and Salmeron also stated that they understood the law how and it applies, and agreed to comply in the future.

(b) (6), (b) (7)(C) Notification: On 10/30/12, (b) (6), (b) (7)(C) indicated that the employer is now providing adequate space to express milk (Ex. B-2b).

Publications Provided: HRG, FS #44 & FS #73

Recommendations:

1. Section 7, FLSNM violations found.
2. (b) (7)(E) .
3. Case conclusion is recommended with no further action.
4. Correspondence sent to the employer should be addressed as follows:
Sue Elliott, Corporate Office HR Supervisor
Tandy Brands Accessories, Inc.
3631 W. Davis St., Suite A
Dallas, TX 75211
5. The back wage contact person is: Sue Elliott: Telephone: (214) 519-5125

(b) (6), (b) (7)(C)

Investigator, Wage and Hour Division
November 29, 2012

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1675127 Originating District: Denver CO District Office
Local Filing Number: 2013-174-09147 Investigating District: Denver CO District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 11/06/2012
Assignment Date: 11/06/2012

Employer Information

Trade Name: Express Scripts, Inc.
Address: 1045 West 6th Street

Pueblo, CO81003

Legal Name: Express Scripts, Inc.
EIN: 43-1420563
County: Pueblo
NAICS Code: 561422
No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 09/12/2012 BNPI:
To: 11/30/2012 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

(b) (7)(E)-Case Ent. Coverage; Sec. 7-Patient Protection & Affordable Care Act (PPACA). ER failed to prov adequate break time to express (b) (6) breast milk for (b) (6) nursing 3 months child. On 1-28-13 FC w/Ryan Lessman-Atty.ER ATC will allow (b) (7)(E) ample time to express breast milk & removed infraction-due to calling in sick to obtain dr's note; (b) (7)(E) ds nursing poli.w/atty-can not require an ee to obtain dr's note to express breast milk:ER ATC; Pubs HRG,Fact sheet nursing mothers,.Rec. admin. closing.

WHI Signature: _____ Date: 02/19/2013

Reviewed By: _____ Date: _____

EIN:	43-1420563		
Investigated	Express Scripts, Inc.	Phone	719-553-4408
Location:	1045 West 6 th St	Fax:	
	Pueblo, Colorado 81003		www.express-scripts.com
Corporate	Express Scripts, Inc One Express Way The Mail Stop HQ2E03	Phone	314-692-1992
Office:	St. Louis, Missouri 63121		
Parent Company:	Express Scripts Holding Company (ESRX) One Express Way St. Louis, Missouri 63121		
Send future correspondence to:			
	Ryan Lessmann	Phone	303-225-2418
	Attorney at Law	Fax:	303-892-5575
	Jackson Lewis LLP 950 17 th Street, Suite 2600 Denver, CO 80202		

COVERAGE

Express Scripts, Inc ("ESI") incorporated in the state of Delaware on March 27, 1992. In April 2012 ESI merged with Medco Health Solutions, Inc. ("Medco"). ESI & Medco are now sister companies, both of which are separate, wholly-owned subsidiaries of Express Scripts Holding Company ("ESRX"). ESRX employs almost (b) (4) individuals. Express Scripts, Inc. & its wholly owned subsidiaries had 40 locations nationwide in 31 cities throughout the U.S. ESI employs (b) (4) individuals company wide. The firm's legal name is: Express Scripts, Inc and their corporate office is located at: One Express Way St. Louis, Missouri 63121. As previously mentioned the firm's parent company is Express Scripts Holding Company (ESRX) with the **same EIN**. Current officers & directors are: George Pax-President, CEO & Chairman of the Board, Jeffrey Hall-Executive Vice President & CFO, Keith Ebling- Executive Vice President, General Counsel & Secretary, Edward Ignaczak-Executive Vice President, Sales & Marketing, Patrick McNamee-Executive Vice President & COO, Matt Harper-Vice President & Treasurer, Martin

Adkins-Vice President & Assistant Secretary & Chris McGinnis-Vice President & Assistant Secretary. (See Exhibit C-1f). The firm is a Patient Care Contact Center for members, physicians and pharmacies to call in with any questions related to a member's prescription benefit. The Patient Care Advocate answers questions related to a member's prescription benefit. They also answer questions regarding benefit coverage, the process or status of a prescription, and other related questions.

All employees are covered under Section 3(s) (1) (a) of the FLSA enterprise coverage during the period of investigation of 9-12-12 to 11-30-12. The annual dollar volume for each of the past three years are as follows: 2009 was (b) (4) for 2010 was (b) (4) for 2012 and more than two employees regularly handle goods that move in interstate commerce. Employees use pencils, telephones, menus and chairs which have moved in interstate commerce. (See exhibit C-1).

On 11-7-12 a copy of "Handy Reference Guide to the Fair Labor Standards Act" was provided to Lisa Calloway- Assistant Human Resource Manager.

The employer's established workweek is Sunday to Saturday. Employees are paid on a bi-weekly basis on Fridays.

The employer is not aware of any collective action under 16(b) of the FLSA being brought against the firm.

3(d) employer Relda Doris-Senior Manager & Beverly Altimier are 3(d) employers. They act directly in the interest of an employer in relation to the overall management and employment practices of the firm.

(b) (7)(E)

(See exhibit D-1 & 2)

EXEMPTIONS

Section 7 (Patient Protection and Affordable Care Act) was found applicable:

- The enterprise has more than (b) (4) employees. The enterprise is not exempt from the Patient Protection and Affordable Care Act. (See exhibit C-1)
- (b) (6), (b) (7)(C) is paid on an hourly basis and no Section 7 exemptions are applicable to (b) (6), (b) (7)(C) work. (See exhibit B-1)
- This compliance review did not address the exempt status of the corporate officers or managers.

All other employees are paid on an hourly basis. (See exhibit C-1)

STATUS OF COMPLIANCE

This limited investigation (b) (7)(E) (b) (6), (b) (7)(C) (b) (7)(E) the firm failed to provide adequate break time to express (b) (6), (b) (7)(C) breast milk for (b) (6), (b) (7)(C) nursing (b) (6), (b) (7)(C) three month old child. (b) (7)(E) (See exhibit B-1)

Violation Summary: FLSA Section 7 of the requirement for nursing mothers in the Patient Protection and Affordable Care Act (PPACA) occurred when a reasonable break time was not provided to the nursing mother.

History: Firm has history.

An FMLA investigation in the Denver District from office 1-30-06 to 7-24-07 disclosed the employer terminated employee for taking FMLA. Employer agreed to pay and agreed to remedy and make whole. Back wages computed \$1,095. (#1478803)

A limited investigation in the Denver District Office from 4-22-06 to 4-17-08 disclosed overtime violation and the employer agreed to comply and pay back wages in the amount of \$7,236.29 to ten employees. (#1501295)

Violations noted:

FLSA, Section 6, Minimum Wage: No violation noted.

FLSA, Section 7, nursing mothers in the Patient Protection and Affordable Care Act (PPACA):

The employer failed to provide one nursing mother the adequate break time to express (b) (6), (b) (7)(C) breast milk for (b) (6), (b) (7)(C) nursing three month child. Although, (b) (6), (b) (7)(C) was allowed to express (b) (6), (b) (7)(C) breast milk during (b) (6), (b) (7)(C) scheduled break times (b) (6), (b) (7)(C) notified (b) (6), (b) (7)(C) Supervisor (b) (6), (b) (7)(C) that the fifteen minutes allotted to (b) (6), (b) (7)(C) was not enough time for (b) (6), (b) (7)(C) to fully express (b) (6), (b) (7)(C) breast milk. On October 4, 2012 (b) (6), (b) (7)(C) told (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) needed to bring in a doctor's note stating (b) (6), (b) (7)(C) had a need to express (b) (6), (b) (7)(C) breast milk. On October 8, 2012 (b) (6), (b) (7)(C) provided (b) (6), (b) (7)(C) with a doctor's note. The note stated "Please allow (b) (6), (b) (7)(C) to breast pump for whatever amount of time is needed." On October 26, 2012, (b) (6), (b) (7)(C) met with (b) (6), (b) (7)(C) Manager. (b) (6), (b) (7)(C) informed (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) needed to provide a more detailed doctor's note. (b) (6), (b) (7)(C) proceeded to inform (b) (6), (b) (7)(C)

that the time (b) (6), (b) (7)(C) was taking to express (b) (6), (b) (7)(C) breast milk was taking longer than the previous other fifteen mothers who had also expressed their breast milk. (See exhibit B-1 & D-14a)

On October 29, 2013, (b) (6), (b) (7)(C) took (b) (6), (b) (7)(C) to (b) (6), (b) (7)(C) scheduled doctor's appointment. (b) (6), (b) (7)(C) requested a doctor's note from (b) (6), (b) (7)(C) pediatrician regarding (b) (6), (b) (7)(C) need to express (b) (6), (b) (7)(C) breast milk so (b) (6), (b) (7)(C) would not have to set another appointment with (b) (6), (b) (7)(C) OBGYN doctor. Although (b) (6), (b) (7)(C) informed the doctor that thirty minutes was not sufficient time to express (b) (6), (b) (7)(C) breast milk, he stated he could only prescribe for the thirty minutes it actually took (b) (6), (b) (7)(C) to express (b) (6), (b) (7)(C) breast milk and not for the preparation time. (See exhibit B-1 & D-14b)

On October 30, 2012, (b) (6), (b) (7)(C) requested the doctor's note from (b) (6), (b) (7)(C) informed (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) did have the doctor's note but the time noted by the doctor was not sufficient amount of time for (b) (6), (b) (7)(C) to express (b) (6), (b) (7)(C) breast milk since the time noted by the doctor did not include preparation time. (b) (6), (b) (7)(C) stated that if the doctor only allowed thirty minutes three times a day on the prescription that would be all that would be given. (b) (6), (b) (7)(C) provided (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) -Human Resource Representative a copy of the U. S. Department of Labor document regarding Nursing Mothers. (b) (6), (b) (7)(C) stated there was no definition of "reasonable time" and (b) (6), (b) (7)(C) stated they could only allow the thirty minutes three times a day as stated in the doctor's note. (b) (6), (b) (7)(C) informed (b) (6), (b) (7)(C) that they could not hold this against (b) (6), (b) (7)(C) and that (b) (6), (b) (7)(C) needs are different than the other nursing mothers. At the end of the day (b) (6), (b) (7)(C) informed (b) (6), (b) (7)(C) that they are within the law and that thirty minutes is all they could do to allow (b) (6), (b) (7)(C) to express (b) (6), (b) (7)(C) breast milk. Since (b) (6), (b) (7)(C) was unable to take the time (b) (6), (b) (7)(C) needed to express (b) (6), (b) (7)(C) breast milk, (b) (6), (b) (7)(C) milk supply decreased, affecting (b) (6), (b) (7)(C) ability to produce sufficient milk for (b) (6), (b) (7)(C) infant. (b) (6), (b) (7)(C) was not given sufficient amount of time to express (b) (6), (b) (7)(C) breast milk.

Sonni L. Fort-Assistant General Counsel, Labor & Employment for the firm stated the following, prior to the Federal requirement for a nursing mother's room, the firm had already dedicated space for this sole use at their facilities to include their Pueblo, CO location. Additionally, prior to (b) (6), (b) (7)(C) (b) (7)(E) the firm had offered (b) (6), (b) (7)(C) several accommodations including a total of three hours off each day for expressing and for separate breaks. However, (b) (6), (b) (7)(C) was not satisfied with the company's offer to comply with (b) (6), (b) (7)(C) doctor's first note, nor was (b) (6), (b) (7)(C) satisfied when the company offered to comply with the doctor's second note. Ms. Fort stated that she believed that the accommodation of three hours off each day is more than what an employer is required to do. (b) (6), (b) (7)(C) job is to be on the phone & (b) (6), (b) (7)(C) requested accommodation could require the firm to hire someone else to do (b) (6), (b) (7)(C) job and this is not what the law requires. Ms. Fort stated that (b) (6), (b) (7)(C) is being unreasonable in this matter. Ms. Fort stated they have had no problems with any current or past mothers who needed to express their breast

milk during their shift. NOTE: On November 8, 2012, the firm offered (b) (6), (b) (7)(C) several accommodations to express (b) (6), (b) (7)(C) breast milk AFTER WHI (b) (6), (b) (7)(C) met with firm on November 7, 2012. (See exhibit D-8, D-10a, D-12a)

Ms. Fort stated the firm followed up with a letter to (b) (6), (b) (7)(C) presenting (b) (6), (b) (7)(C) with three options. Ms. Fort provided daily logs for the nursing mother's room and (b) (6), (b) (7)(C) daily clock in and out. Ms. Fort stated they have accommodated (b) (6), (b) (7)(C) new work schedule. (b) (6), (b) (7)(C) new schedule is: 8:30 a.m. to 10:30 a.m.; nurse 10:30a.m. to 11:30 a.m.; work 11:30a.m. to 1:30 p.m.; nurse 1:30 p.m. to 2:30 p.m.; 2:30 p.m. to 4:30 p.m. and leave at 4; 30 pm. (b) (6), (b) (7)(C) has been working this schedule since the middle of November after WHI (b) (6), (b) (7)(C) met with the firm. (See exhibit D-12a, 22)

On December 6, 2012 WHI (b) (6), (b) (7)(C) was contacted by Ryan Lessmann-Attorney at Law Jackson Lewis, LLP stating the firm had requested his law firm be their representative for this investigation. WHI (b) (6), (b) (7)(C) informed Mr. Lessmann that even though the firm has allowed (b) (6), (b) (7)(C) to work the above schedule the firm noted in their letter that this will be evaluated on a monthly basis. Mr. Lessmann stated the schedule could be evaluated on a monthly basis simply because of the business demands but they are aware that (b) (6), (b) (7)(C) is on (b) (6), (b) (7)(C) schedule and the firm will work with (b) (6), (b) (7)(C). Additionally, the time needed to nurse by (b) (6), (b) (7)(C) can decrease as the child gets older but, (b) (6), (b) (7)(C) is still to be allowed the time (b) (6), (b) (7)(C) needs to express (b) (6), (b) (7)(C) breast milk.

FLSA, Section 11, Recordkeeping: No violation noted.

FLSA, Section 12, Child Labor: Firm does not employ anyone under the age of 18 at this location.

DISPOSITION

On 1-28-13 a final conference was held via telephone with Ryan Lessmann-Attorney at Law-Jackson Lewis LLP. WHI (b) (6), (b) (7)(C) represented the Wage Hour.

WHI (b) (6), (b) (7)(C) informed Mr. Lessmann that the firm requested (b) (6), (b) (7)(C) provide them with a doctor's note as to the amount of time (b) (6), (b) (7)(C) needs to express (b) (6), (b) (7)(C) breast milk. Additionally, the firm's Nursing Mothers Policy states the firm may require other relevant information and/or other reasonable documentation from the employee's healthcare provider, upon request to the employee. And the employee received an infraction for calling in sick when (b) (6), (b) (7)(C) had to go to the doctor's to obtain the requested doctor's note.

Mr. Lessman stated the firm has always accommodated all nursing mothers and they also provide the

nursing mothers a private nursing room. Additionally, the firm believes they have allotted (b) (6), (b) (7)(C) the ample time (b) (6), (b) (7)(C) needs to express (b) (6), (b) (7)(C) breast milk.

Mr. Lessman stated the firm agrees to comply in the future by allowing (b) (6), (b) (7)(C) with the following schedule-work from 8:30 a.m. to 10:30 a.m.; express (b) (6), (b) (7)(C) breast milk from 10:30 a.m. to 11:30 a.m.; work 11:30 a.m. to 1:30 p.m.; express (b) (6), (b) (7)(C) breast milk/lunch from 1:30 p.m. to 2:30 p.m.; work from 2:30 p.m. to 4:30 p.m. and then leave for the day. (b) (6), (b) (7)(C) has agreed to this schedule since this gives (b) (6), (b) (7)(C) ample time to express (b) (6), (b) (7)(C) breast milk. Also, regarding the infraction (b) (6), (b) (7)(C) received for calling in sick when (b) (6), (b) (7)(C) had to go to the doctor's to obtain the requested doctor's note, the firm will remove the unexcused absence occurrence from October 29, 2012. (See exhibit D-26)

Furthermore, Mr. Lessmann was informed of the possibility of civil money penalties. Mr. Lessmann agrees to future compliance.

Publication provided: HRG, Fact Sheet # 73.

(b) (6), (b) (7)(C) On 1-29-13 (b) (6), (b) (7)(C) was notified of the outcome of the investigation via telephone.

RECOMMENDATION:

Recommend case be closed (b) (7)(E) .

(b) (6), (b) (7)(C)
Wage & Hour Investigator
1-31-13

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1677133 Originating District: Albuquerque NM District Office
Local Filing Number: 2013-105-00230 Investigating District: Albuquerque NM District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 11/28/2012
Assignment Date: 11/28/2012

Employer Information

Trade Name: State of NM Department of Finance

Legal Name: NM Department of Finance and

Address: 407 Galisteo St.

EIN: 85-6000565

County: Santa Fe

NAICS Code: 09390

Santa Fe, NM 87501

No. Of Employees: 140

Investigation Information

Period Investigated From: 12/13/2010

BNPI:

To: 12/12/2012

Reinvestigation: ☐

Investigation Type: (b) (7)(E)

Recurring Violation: ☐

Investigation Tool: Full Investigation

Future Compliance Agreed: ☐

Compliance Status: Compliance (no violations found)

Involved in AG: ☐

Recommended Action:

BWFS: ☐

RO/NO Review: ☐

CMP: ☐

Follow Up Investigation: ☐

Litigation: ☐

Other Action: ☐

Civil Action: ☐

Denial of Future Certificate: ☐

Criminal Action: ☐

BW Payment Deadline:

Submit For Opinion: ☐

Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

FMLA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FMLA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

26.25 hrs. Enterprise coverage per sec 3(s)(1)(C) of the Act. Public Agency. (b) (7)(E)
EE is an exempt employee not eligible for coverage of FLS-NM. ER has designated an appropriate are for expressing milk. ER ATC. (b) (7)(E) Recommend (b) (7)(E) close (b) (7)(E)

WHI Signature: _____ Date: 01/22/2013

Reviewed By: _____ Date: _____

State of New Mexico Dept of Finance Admin	Case File #1677133
407 Galisteo Street	2013-105-00230
Santa Fe, NM 87501	EIN # 85-6000565
505/827-3639	Greg Shaffer, General Counsel

FLS-NM NARRATIVE

CASE ASSIGNMENT INFORMATION: This full investigation was initiated based on (b) (7)(E). (b) (6), (b) (7)(C) (b) (7)(E) employer violated (b) (6), (b) (7)(C) rights under FLS-Nursing Mother by requiring (b) (6), (b) (7)(C) to express milk in a shower room located within a bathroom. Additionally, (b) (6), (b) (7)(C) thought that (b) (6), (b) (7)(C) was retaliated against because of (b) (6), (b) (7)(C) request to express milk in a private space. (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) duties changed or were taken away upon multiple requests for space to express milk. (b) (6), (b) (7)(C) (b) (7)(E) *Exhibit B-3.*

HISTORY: Case number 1661668. Employee (b) (7)(E) (b) (6) was not paid for hours over 40. (b) (7)(E) Employee was exempt from overtime-professional exemption was applicable for employee. Employer agreed to future compliance. *Exhibit D-61-D-64.*

COVERAGE

The New Mexico Division of Finance Administration oversees the financial and budgetary services for the State of New Mexico programs and local government body grant resources. The firm is a public agency (state) employer who employs over 20,000 individuals and is therefore covered under 3(s)(1)(C) of the Regulations.

The establishment is located at 407 Galisteo Street, Albuquerque, NM 87501. The New Mexico State Division of Finance Administration currently has a staff of 140 full time hourly employees to include accountants, budget and management analysts, financial coordinators, human resources and administrative personnel. *Exhibits C-1-C-7.* The New Mexico Division of Finance Administration oversees the financial and budgetary services for the State of New Mexico programs and local government body grant resources. Ms. Lisa Lujan, Human Resource Director is the Section 3(d) employers of the Fair Labor Standards Act (hereafter the Act).

ENTERPRISE COVERAGE: The firm is a public agency (state) employer who employs over 20,000

individuals and is therefore covered under 3(s)(1)(C) of the Regulations.

INDIVIDUAL COVERAGE: Individual Coverage was not established. Individual was not covered under the FLS-NM as she is an exempt employee. Exhibit D-14-D-17.

SCOPE: This is a full FLS-Nursing Mother investigation of the New Mexico State Department of Finance Administration located at 407 Galisteo Street, Santa Fe, New Mexico 87501.

MODO: Albuquerque District Office, George Watkins, District Director, (505) 248-6107. MODO sent on 12/14/2012, no special instructions. Exhibit D-1-D-2.

PERIOD OF INVESTIGATION: December 13, 2010 through December 12, 2012.

EXEMPTIONS

One exemption was claimed and one was appropriate for the period of investigation.

Appropriate

Section 13(a)(1); 541.300

The employee listed below was exempt from the overtime provisions of the Act as an employee of a public agency paid according to a pay system established by New Mexico State statute. (b) (6), (b) (7)(C) is professionally exempt because (b) (6), (b) (7)(C) was paid on a salary basis of (b) (6), (b) (7)(C) per week; (b) (6), (b) (7)(C) possesses a masters degree in finance; and (b) (6), (b) (7)(C) position required (b) (6), (b) (7)(C) to have advanced knowledge in the field of finance and administration.

- I. (b) (6), (b) (7)(C), Bank Reconciliation Assistant Manager

All employees were paid on an hourly basis. Exhibit C-1-C-7.

STATUS OF COMPLIANCE

PAY PRACTICE: Employees are paid on a bi-weekly basis. The work week is Saturday through Friday. All the hourly employees log hours in and out on the computer. The computer calculates the hours and sends to human resources who processes the payroll for the Department of Finance Administration. The Department of Finance Administration processes payroll for all state employees other than the Finance Administration department employees. Records are kept electronically at the corporate office. *Exhibit C-3.*

(b) (6), (b) (7)(C) (b) (7)(E) prior to the initial conference and (b) (6), (b) (7)(C) was certain that (b) (6), (b) (7)(C) was not an exempt employee as (b) (6), (b) (7)(C) was either paid overtime or earned compensable time. *Exhibit B-3.* The initial conference and records check revealed that (b) (6), (b) (7)(C) was a professionally exempt employee throughout the period of investigation, *Exhibit B-1-B-3b, C-1-C-7.* The State of New Mexico FLSA Exempt Overtime Compensation policy does allow exempt employees to earn compensatory time for each hour worked in excess of 80 hours in a pay period. *Exhibit D-36-D-37.*

The New Mexico State Department of Finance and Administration has had eight nursing mothers within the period of investigation (*Exhibit C-8*), however, none of the other nursing mothers requested any accommodations to express milk as they all occupied private offices and used their offices to express milk.

(b) (6), (b) (7)(C) used a locked and private room with a working shower (that was used a few times per week) within a bathroom to express milk. The room was a shower within a bathroom. *Exhibit D-44a-D-44h.* (b) (6), (b) (7)(C) requested different accommodations by email on September 24, 2012 and several times thereafter. *Exhibit D-3-D-3a.*

(b) (6), (b) (7)(C) did not meet the coverage requirement for the Fair Labor Standards Act Nursing Mother as (b) (6), (b) (7)(C) did occupy an exempt position. (*Exhibit D-14-D-17*). (b) (6), (b) (7)(C) did in-fact sign a request for FLSA exempt compensatory time on 7/23/12. *Exhibit D-6.* Because (b) (6), (b) (7)(C) is an exempt employee, (b) (6), (b) (7)(C) would not be entitled to coverage under the FLS-Nursing Mother Act to express milk. *Exhibit D-55.*

Additionally, (b) (6), (b) (7)(C), (b) (7)(E) had duties taken from (b) (6), (b) (7)(C) in response to (b) (6), (b) (7)(C) continuous requests for different accommodations to express milk. The investigation revealed that the New Mexico Department of Finance and Administration began a department restructure in January 2012, followed by a transitional period, and implemented changes that affected many employees in the department. *Exhibit B-1.*

(b) (6), (b) (7)(C) was transferred to another division within the Department of Finance and Administration upon giving (b) (6), (b) (7)(C) 30 day resignation notice. The state attorney stated that (b) (6), (b) (7)(C) transfer was an internal practice and procedure for departing employees. The state attorney noted that not only was it necessary to document work processes, it also limits high risk access to financial systems that can impact employees or agencies of the State of New Mexico. *Exhibit C-8.*

It should be noted that although (b) (6), (b) (7)(C) was not covered under the Fair Labor Standards Act-Nursing Mothers to express milk, the investigation did prompt the Department of Finance Administration to designate a more appropriate area to express milk on December 11, 2012. *Exhibit D-18.* The new area is marked as a designated area, it is private, clean, has appropriate space and seating, a working lock, and does have a sign to reflect if it is in use or vacant. *Exhibits D-44-i-D-44-p.*

VIOLATIONS

SECTION 6(a): None.

SECTION 7(a): None.

SECTION 11: None.

SECTION 12: None.

DISPOSITION

A final conference was held telephonically on January 22, 2013. Present at the conference was Mr. Greg Shaffer, General Counsel State Attorney. Present at the conference for Wage and Hour was WHI (b) (6), (b) (7)(C). WHI (b) (6), (b) (7)(C) discussed coverage and the period of investigation. At this time, Mr. Greg Shaffer was informed that no violations had occurred as the employee is not covered under the Fair Labor Standards Act-Nursing Mothers as she is an exempt employee. General Counsel State

Attorney Greg Shaffer has agreed to the following:

II. Attorney Greg Shaffer has agreed to continue to ensure future compliance with the provisions of the Fair Labor Standards Act-Nursing Mothers.

FMLA: Compliance with the provisions of the FMLA was reviewed, establishment does have a policy. Exhibit C-9-C-14, D-21-D-35.

(b) (6), (b) (7)(C) INFORMATION: WHI (b) (6), (b) (7)(C) contacted (b) (6), (b) (7)(C) on this day to advise (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) was not a covered employee under the Fair Labor Standards Act-Nursing Mother.

RECOMMENDATION: (b) (7)(E)
Please send correspondence to: General Counsel Attorney Greg Shaffer, New Mexico State Department of Finance Administration, 407 Galisteo Street, Santa Fe, New Mexico 87501.

PUBLICATIONS: Handy Reference Guide & Fact Sheet Index 44 given at initial conference notification.

(b) (6), (b) (7)(C)
Wage Hour Investigator
January 22, 2013

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1683611 Originating District: San Antonio TX District Office
Local Filing Number: 2013-310-00199 Investigating District: San Antonio TX District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 02/02/2013
Assignment Date: 02/02/2013

Employer Information

Trade Name: McDonald's Legal Name: McDonald's General McMullen Corp.
Address: 6350 Old Pearsall Rd. EIN: 74-2873506
County: Bexar
NAICS Code: 722211
San Antonio, TX 78242 No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 12/07/2012 BNPI:
To: 02/15/2013 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Full Investigation Future Compliance Agreed: ☒
Compliance Status: Compliance (no violations found) Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

FLSANM Sec 3(s)(1)(a)Cov: Ent, Sec. 6- No violation found., Sec. 7 -no violations, Sec 11-no violation found, Sec 12 - No CL found. Disp: FC w/Ruben Campos, Attorney on 2/28/2013, ATC 2/28/2013. Publs: HRG, FS44, FS73, DOL website. Letter sent to [REDACTED] on 2/28/2013. Rec: Closed adm. Tot hrs - 14.0

WHI Signature: _____ Date: 02/28/2013

Reviewed By: _____ Date: _____

McDonald's Case ID: 1683611

McDonald's General McMullen Corp.
DBA McDonald's
LFN: 2013-310-00199
WCID:1683611
EIN:74-2873506

6350 Old Pearsall Rd.
San Antonio TX 78242
Phone: 210-623-8000

Corporate information:
5815 Callaghan Rd. Suite 100
San Antonio, Texas 78212
Phone: 210-227-5004
Fax: 210-227-1910

Point of contact:
Ruben Capos, Attorney
PO Box 15918
San Antonio, TX 78212
210-414-3141
rdccampos@sbcglobal.net

FLSANM NARATIVE

COVERAGE:

Nature of Business: The subject firm is a limited service restaurant.

Organization of Business: The subject firm is a Limited Liability Corporation which was opened in the state of Texas, on March 6, 1998. The sole owner of the firm is Richard Acosta, President and Celia Acosta, Secretary. During the period of investigation the subject was operating as General McMullen Corp. dba McDonald's and employed a staff of 50. The headquarters is located at 5815 Callaghan Rd. Suite 100, San Antonio, Texas 78212, phone: 210-227-5004, fax: 210-227-1910. Other locations include:

11482 Perrin Beitel' 3806 North Loop 1604 & Bulverde Rd., 15011 Jones Maltsberger, 12203 Jones Maltsberger & Starcrest, 14630 Huebner Rd. & N.W. Military Hwy, 2922 Blanco Rd. & Fresno, 10950 Hwy 151, 8349 Culebra Rd., 11031 Culebra Rd., 11038 Potranco Rd. , 1846 S. General McMullen , 2315 SW 36th St. & 90th , Wal-Mart 11210 Potranco Rd., Wal-Mart - 8923 W. Military Dr., Wal-Mart 6703 Leslie Rd., 6350 Old Pearsall Rd. & 410 South, 14830 Lytle Somerset Street , 101 Alamo Plaza, 721 San Pedro Ave., 1009 E. Hondo Street, and 14830 Lytle Somerset Street **(see exhibit-C-1 &C-2).**

Annual Dollar Volume (ADV): The Annual Dollar Volume for the subject form for the previous three years is over **(b) (4)**

Enterprise Coverage: Enterprise coverage under Sec. 3(s)1(A) of the FLSA applies for the entire investigative period. At least two or more employees process credit card payments made by customers **(see exhibit-C-1 &C-2).**

Period of Investigation: This case was limited to Section 7 (Patient Protection and Affordable Care Act) for **(b) (6), (b) (7)(C)**. The investigation period was from 12/07/2012 to 2/15/2013. This investigation was conducted by WHI **(b) (6), (b) (7)(C)** of the San Antonio District Office for Wage and Hour.

Reason for Investigation: This investigation **(b) (7)(E)** **(b) (7)(E)** worked at the establishment as a crew member. **(b) (6), (b) (7)(C)** **(b) (7)(E)** the employer failed to provide **(b) (6)** with reasonable break time or a space to express milk.

Employment Relationship Sec. 3(d) Richard Acosta, President and Celia Acosta, Secretary, owners of the subject firm meet the definition under Section 3(d) of the FLSA of an employer in relation to the employee. It has been determined that an employer-employee relationship exists due to the performance of services and the support of them being an integral part of the employer's business **(see exhibit-C-1 &C-2).**

MODO: The San Antonio District Office is the MODO for this firm. No special instructions apply **(see exhibit D-8).**

EXEMPTIONS: This case was limited to Section 7 (Patient Protection and Affordable Care Act) for **(b) (6), (b) (7)(C)** was paid on an hourly basis and no Section 7 exemptions were applicable to **(b) (6)** employment. **No exemptions were claimed or denied. (See exhibits B).**

STATUS OF COMPLIANCE: Investigative History: A search in WHISARD indicated the firm has had no prior FLSA investigations at this location. The company has had an EEPA investigation CID# 1392328 in 2005 resulting in \$2,000.00 in BWs due to one employee and \$9,000 in CMPs the ER ATC/ATP and an FLSA investigation at their San Pedro location in 1997 CID# 342868 resulting in \$52.00 in BWs due to one employee for a 541 misclassification.

(b) (7)(E) Information: This investigation **(b) (7)(E)** **(b) (6), (b) (7)(C)**
(b) (7)(E) the employer failed to provide **(b) (6)** with reasonable break time or a space to express milk. **(b) (7)(E)** (see exhibits B-1 & 2).

Section 6: Not explored due to the limited nature of this action.

Section 7: No violations **(b) (7)(E)**

No violations were found with Section 7 (Patient Protection and Affordable Care Act):

- I. Providing reasonable break time: through employee interviews it was not **(b) (7)(E)** that the firm had not offered **(b) (6), (b) (7)(C)** any additional minutes to use each day for **(b) (6), (b) (7)(C)** nursing breaks. Based on employee interviews **(b) (6), (b) (7)(C)** had mentioned that **(b) (6), (b) (7)(C)** was denied the ability to express by one manager upon termination. Interviews with management at the firm allege that they had no knowledge of **(b) (6), (b) (7)(C)** requirement for nursing breaks due to **(b) (6), (b) (7)(C)** not disclosing the need for them. Management for the firm stated that they had no knowledge of these needs until **(b) (6), (b) (7)(C)** expressed them after **(b) (6), (b) (7)(C)** had already terminated **(b) (6), (b) (7)(C)** employment and had three consecutive unexcused absences in which **(b) (6), (b) (7)(C)** failed to report for **(b) (6), (b) (7)(C)** scheduled shift or call in. (See Exhibits B-1 & 2).
- II. Providing a space for nursing mothers that was a place, other than a bathroom, shielded from view, and free from intrusion from co-workers and the public: During a tour of the establishment WHI **(b) (6), (b) (7)(C)** reviewed the location designated by the employer as to where employees would be able to express milk shielded from view, and free from intrusion from co-workers and the public. The firm has a manager's office at this location which would have allowed nursing breaks to

standard as required.

(b) (6), (b) (7)(C) was unresponsive to mail and telephone calls throughout the investigative process. An employee interview was not obtained from (b) (6), (b) (7)(C), therefore all facts regarding (b) (7)(E) was obtained from the (b) (7)(E) (See exhibits D-1, D-10, & D-11).

Section 11: Not explored due to the limited nature of this action.

Section 12: Not explored due to the limited nature of this action.

Computations: Not applicable

DISPOSITION: A final conference was held on 2/28/2013 with Ruben Campos, Attorney for the subject firm, Inc. at the company headquarters. Wage and Hour was represented by WHI (b) (6), (b) (7)(C). (See Exhibit E-1).

During this conference, WHI (b) (6), (b) (7)(C) advised Mr. Campos and the employer of the requirements under The Patient Protection and Affordable Care Act ("Affordable Care Act") Sec 7 FLSA Nursing Mothers. While no violation could be substantiated in this instance, WHI (b) (6), (b) (7)(C) reminded the employer that the company must continue to cooperating with any employees needs for the purpose of expressing breast milk within the requirements of the act.

Coverage: under the FLSA was discussed with the employer. The employer was told that enterprise coverage under Sec. 3(s)1(A)ii of the FLSA applies for the entire investigative period for the company for the following reasons: At least two employees handle goods that have traveled through interstate commerce including but not limited to food products and the use of credit/debit card machines.

Exemptions: Possible exemptions from The Patient Protection and Affordable Care Act ("Affordable Care Act") Sec 7 FLSA Nursing Mothers were discussed with the employer's representative.

Minimum wage: No violations found.

Overtime: No violations found.

Record Keeping: No violations found.

Child Labor: No violations found.

Corrective Action Taken/Future Compliance: Mr. Campos agreed on behalf of his client to maintain compliance on 2/28/2013. The employer stated she will stay in compliance by doing taking the following actions:

Providing adequate time and location for breaks as required under the Patient Protection and Affordable Care Act ("Affordable Care Act") Sec 7 FLSA Nursing Mothers. (See Exhibit E-1).

(b) (6), (b) (7)(C) notification: WHI **(b) (6), (b) (7)(C)** had attempted to contact **(b) (6), (b) (7)(C)** via telephone and mail throughout the investigation but had not had successful contact. A final letter was mailed to **(b) (6), (b) (7)(C)** on 2/28/2013 informing **(b) (6), (b) (7)(C)** to contact the department for a full briefing on the outcome of the investigation. (See D exhibits and the case diary).

Publications provided: The Handy Reference Guide to the Fair Labor Standards Act (SBREFA), Fact Sheet #44, Fact Sheet #73, and DOL website were provided to the employer at the initial conference held on 2/25/2013.

Other Laws Violated: N/A

Recommendations/CMPs:

(b) (7)(E) I recommend this investigation be closed administratively with no further action.

(b) (6), (b) (7)(C)

Wage & Hour Investigator
2/28/2013

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1686754 Originating District: Denver CO District Office
Local Filing Number: 2013-174-09533 Investigating District: Denver CO District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 03/01/2013
Assignment Date: 03/01/2013

Employer Information

Trade Name: Jefferson County Sherrif Office
Address: 200 Jefferson County Parkway

Golden, CO80401

Legal Name: Jefferson County Sheriff Office
EIN: 84-6000774
County: Jefferson
NAICS Code: 09640
No. Of Employees: 1500

Investigation Information

Period Investigated From: 03/01/2011 BNPI:
To: 03/01/2013 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Compliance (no violations found) Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

Jefferson County Government : (b)(1) is a nursing mother that worked out an agreement w/Supervisor Culverhouse to express milk Before 7am, at 11am and 2:50pm. (b)(1) got a note from (b)(6),(b)(7) Doctor w/ those times specified. (b)(1) wants to drop the case as agreement between ER and (b)(1) is working. ER was not contacted.

WHI Signature: _____ Date: 06/26/2013

Reviewed By: _____ Date: _____

JEFFERSON COUNTY SHERRIF's OFFICE
200 Jefferson County Parkway
Golden CO 80401
303 271-0211

1686754

EIN 84-6000774

Nursing Mother's Complaint

Subject is a branch of the Jefferson County Local Government founded in 1861. Jefferson County is located outside of the metropolitan City of Denver. The County encompasses the following cities and/or towns as part of the County: Lakewood, Arvada, Wheat Ridge, Golden, and Edgewater.

Subject is a covered employers as defined under Section 203(x) of the Fair Labor Standards Act (FLSA). Section 203(x) defines “public agency” as the government of a State or political subdivision of a State, or any interstate governmental agency. Section 3(s)(1)(C) of the Act establishes coverage as “an activity of a public agency”.

History – 2 prior cases on the Jefferson County Sherrif's department.

1206833 – FLSA Section 7 overtime violations , Back Wages computed at \$99,000 ER ATP ATFC

1164524 – FLMA (b) (7)(E) – no violations disclosed.

EXEMPTIONS

Section 7 – (Patient Protection and Affordable Care Act) was found applicable.

The enterprise has more than 2,300 employees. The enterprise is not exempt from the Patient Protection and Affordable Care Act.

(b) (7)(E) (b) (6), (b) (7)(C) (b) (7)(E) (b) (6), (b) (7)(C) was not allowed reasonable break time for (b) (6), (b) (7)(C) to express milk at the 7AM, 11AM, and 3PM times as (b) (6), (b) (7)(C) had been allowed to for the past two months.

After several telephone conversations with (b) (6), (b) (7)(C) (b) (7)(E) (b) (6), (b) (7)(C) had obtained a note from (b) (6), (b) (7)(C) health care provider changing the feeding times to comport with the demands of (b) (6), (b) (7)(C) supervisor, (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) supervisor compromised with one of the times and that (b) (6), (b) (7)(C) was satisfied with the outcome. Then (b) (6), (b) (7)(C) further stated that the room that is allocated for the nursing

mothers is a separate room with a lock on the door. But, there are 100 individuals that have key access to the room. It was explained to (b) (6), (b) (7)(C) that the employer satisfied the FMLA requirement and that Wage-Hour could not act on that situation. It was suggested that (b) (6), (b) (7)(C) post a sign on the door that the room was occupied so no one accidentally unlocked the door.

(b) (6), (b) (7)(C) stated on March 25, 2013 that (b) (6), (b) (7)(C) did not wish to pursue (b) (7)(E)

The employer had not been notified (b) (7)(E)

Recommend the case be closed as (b) (6), (b) (7)(C) (b) (7)(E)

(b) (6), (b) (7)(C),

Investigator

04/17/2013

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1689038 Originating District: Denver CO District Office
Local Filing Number: 2013-174-09586 Investigating District: Denver CO District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 03/22/2013
Assignment Date: 03/22/2013

Employer Information

Trade Name: Mesa County Legal Name: Mesa County
Address: 544 Rood Ave EIN: 84-6000783
County: Mesa
NAICS Code: 09890
Grand Junction, CO81501 No. Of Employees: 932

Investigation Information

Period Investigated From: 12/01/2012 BNPI:
To: 04/05/2013 Reinvestigation: ☒
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

3(s0(1)(c) Public agency 541.100 for Shelter Director. SOC: ER failed to provide adequate space for expressing milk for ees at the shelter as required by 7(r). ER ATC ER provided with HRG and fact sheet 73

WHI Signature: _____ Date: 04/25/2013

Reviewed By: _____ Date: _____

Mesa County Case ID: 1689038

1689038
EIN: 846000783
Mesa County Government
Animal Services
544 Rood Ave
Grand Junction, CO 81501
970 244-1855

Contact person / future correspondence

Nina Atencio, County Attorney
POB 20,000
Grand Junction, CO 81502
970 244-1612 phone
970 255-7196 fax

FLSANM NARRATIVE

COVERAGE

Mesa County Animal Services is a government agency located in Mesa County, CO. As a government agency it is covered by the provisions of the FLSA under Sec. 3(s)(1)(C). The employer also has more than 50 employees thus Sec. 7(r) of the Act is applicable. . Therefore all of the employees of the agency are covered by the portions o the Act for the period of the investigation (C1).

number of ees

At the time of the investigation the agency had 932 total employees

where when incorporated

Colorado 1883

Ownership/principals

Interim County Administrator Tom Fisher

Mesa County Animal Services Director Penny McCarty

Section 3(d) Employer

The 3(d) employer as defined by the Act is Penny McCarty. She is the Animal Control Shelter Director. She is responsible for assigning employee's work schedule and duties on a daily basis.

MODO

A MODO was done with the Denver DO. (b) (7)(E) (D1).

Give out HRG

The HRG was given to Nina Atencio, Attorney, at the initial conference.

16b

The employer indicated that no employees had filed a collected action against the company under Sec. 16b of the Act in the past.

Exemptions

Sec. 13(a)(1)

541.100 Executive exemption was applicable to the following position.

Director. This person hires/fires and directly oversees the work of at least two full time employees. This person is in charge of the entire animal control shelter and all of its employees. Penny McCarty.

No other exemptions were claimed or reviewed.

STATUS OF COMPLIANCE

This case originated as (b) (7)(E) (b) (6), (b) (7)(C)
(b) (7)(E) nursing mother rights were violated. The
investigation supported (b) (6) (b) (7)(E)

Violation Summary:

The employer failed to provide (b) (6), (b) (7)(C) with an adequate space to express milk while at the animal control shelter.

Period of Investigation 11/30/12 – 3/11/13

History

183500 6/14/93 Mesa County School District. No violation

183805 12/28/93 Mesa County Sheriff's Office. No violation

Period of Investigation:

History: none

Sec. 6: The investigation did not find any minimum wage violations for the period of the investigation.

Sec. 7: The investigation found that the employer failed to provide adequate space for its employees to express milk as required by Sec. 7(r) of the Act.

The employer did not provide adequate space for the nursing employee to express milk. The employee was an animal control officer who worked both in the field and at the shelter. While at the shelter there was no where for the employee to express milk that was not interrupted or out of the view of other employees.

The WHI toured the facility and was told by the site director Penny McCarty that there was no place at the facility that met the requirements of the Act. After the tour the WHI determined that the only suitable location was the Director's office which was not made available to the nursing employee.

While in the field the nursing employee was told (b) (6), (b) (7)(C) could express milk in the county vehicle (b) (6), (b) (7)(C) used to perform (b) (6), (b) (7)(C) job duties. According to the employee the vehicle was not adequate for (b) (6), (b) (7)(C) to express milk so (b) (6), (b) (7)(C) eventually gave up expressing due to the lack of available space to express milk.

Sec. 11: The investigation did not find any record keeping violations for the period of the investigation.

Sec. 12: The investigation did not find any child labor violations for the period of the investigation.

Independent Contractors

The employer did not have any misclassified independent contractors during the period of the investigation.

H2B workers

The employer did not have any H2B workers during the period of the investigation.

FMLA

The employer's FMLA policy was provided by Nina Atencio, Asst. Mesa County Attorney. It was reviewed by the WHI and the policy was found to be incomplete in its contents (D2).

The review of the policy found that it failed to mention Veterans as a covered Service Member for entitlement under the Military Caregivers Leave portion of the Act.

The WHI met with representatives of Mesa County to go over the policy and changes they needed to make to come into compliance with policy requirements of the Act.

The employer agreed to include veterans in its updated version of its FMLA policy. Mesa County said it would take a couple months to update the FMLA policy due to civic procedures that have to be followed in order to get the changes into the County's handbook. Once the policy is changed and approved they will forward a copy of the revised policy to Wage Hour.

DISPOSITION

The final conference was held at the Animal Control shelter on 4/4/13. It was attended by Nina Atencio, Attorney, Penny McCarty, Director, Beth Smith, Office Mgr. Shelter and WHI (b) (6), (b) (7)(C). The provisions of the Act were discussed as well as their application to the establishment. Once that was covered the specific violations were reviewed.

After some lengthy discussion the employer suggested that employees assigned to perform their duties in a company provided vehicle could possibly go to other county buildings to express milk. If there was not a building available then they did not have any suggestions for providing acceptable space to express milk. The WHI said (b) (6), (b) (7)(C) would contact (b) (6), (b) (7)(C) district office for advice.

The WHI was contacted by (b) (6), (b) (7)(C) supervisor who advised (b) (6), (b) (7)(C) that the employer had to provide adequate space while employees were at the animal shelter. It was determined that the director's office was the only acceptable space at the shelter so the employer would have to make the director's office available for employees who needed to express milk.

With regards to employees who are assigned to drive a vehicle for their job duties the WHI supervisor said that (b) (6), (b) (7)(C) sought advice from the Regional Office who brought it up with the National Office. After some deliberation it was determined that there was not a readily available solution for the problem of providing adequate space for expressing employees. The suggestion offered by the employer, to have employees go to a county building if available, would be allowed. The DO also suggested that the employer could use a sun shade for the windshield of the vehicle so the employee would be somewhat obscured from public view. The DO suggested asking the employer to explore other alternatives for providing adequate space and forward the suggestions to Wage Hour for consideration.

The WHI contacted Nina Atencio, Attorney, and advised her that the investigation findings would show a violation for not providing an adequate space at the shelter but would not cite a violation for not providing space while an employee was assigned to drive a vehicle. The WHI told Ms. Atencio that the director's office would have to be provided for employees at the shelter. He also told her that one solution for providing space in the vehicle would be to have a sun shade or let the employee go to another county building when available. The WHI also told Ms Atencio that the Wage Hour would welcome any suggestions the employer comes up with to address this situation.

Must put ER response to future compliance in bold

Ms. Atencio stated **they would make the Director's office available for employees who need to express milk while at the shelter. They would continue to explore solutions for providing adequate space for employees assigned to vehicles to perform their job.**

Notify ee of findings

(b) (6), (b) (7)(C) was notified of the investigation findings by phone on 4/23/13.

Publications

HRG, Fact sheet 73

(b) (7)(E)

[REDACTED]

RECOMMENDATION

This case should be administratively closed out.

(b) (6), (b) (7)(C), WHI 4/25/13

WHISARD Compliance Action Report

U.S. Department of Labor Wage and Hour Division

Case ID: 1699803 Originating District: Denver CO District Office
Local Filing Number: 2013-174-09833 Investigating District: Denver CO District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 07/01/2013
Assignment Date: 07/01/2013

Employer Information

Trade Name: Essentia Health Legal Name: Essentia Health
Address: 3000 32nd Ave South EIN: 26-1175213
County: Cass
NAICS Code: 622110
No. Of Employees: (b) (4)
Fargo, ND58103

Investigation Information

Period Investigated From: 07/30/2011 BNPI:
To: 07/29/2013 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☐
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

3(s)(1)(A)&3(s)(1)(B) ent cov. Secs 6,11&12: not explored. Sec 7: ER did not provide adequate space for NM in an area other than a bathroom and free from public intrusion. FC 10/23/13 via phone w/ Director of HR Compliance Christine Hlavac. The ER ATC by establishing alternate acceptable locations for NMs. [REDACTED] notified via voicemail 10/25/13. Pubs: HRG, Fact Sheet 73.

WHI Signature: _____ Date: 10/25/2013

Reviewed By: _____ Date: _____

<u>FEIN:</u>	<u>26-1175213</u>		
<u>Investigated</u>	<u>Essentia Health</u>	<u>Contact:</u>	<u>Ms. Christine Hlavac, Director of HR Compliance</u>
<u>Location:</u>	<u>3000 32nd Ave South</u>	<u>Phone:</u>	<u>218-786-4033</u>
	<u>Fargo, ND 58103</u>	<u>Fax:</u>	<u>218-786-4187</u>
<u>Send future</u>	<u>Ms. Christine Hlavac, Director of HR Compliance</u>		
<u>correspondence to:</u>	<u>Essentia Health</u>		
	<u>407 E. 4th St SSB6</u>		
	<u>Duluth, MN 55805</u>		

Coverage

Essentia Health is a health care non-profit (501(c)(3)) organization operating 16 clinics and 18 hospitals in the United States. The organization employs approximately (b) (4) employees. Essentia Health is operated by a board of directors comprised of the following individuals:

CEO Greg Glasner
Administrative Officer and Legal Officer Theresa O'Toole
CMO Patrick Twumey
CO John Smylie
President and CFO Kyle Dorrow
(See exhibits C-1 and D-8)

The organization was registered as a non-profit in 2003 in the state of Minnesota. All establishments are considered one enterprise due to their common purpose and control. All establishments are health care providers and the board of directors makes all significant business decisions for all establishments. The investigation was not expanded to other establishments because it was limited in nature. (See exhibits C-1 and C-2)

All employees are covered by the Fair Labor Standards Act (FLSA) 3(s)(1)(B) enterprise coverage for the period of investigation 7/30/11-7/29/13. The enterprise is engaged in the operation of a hospital and therefore all employees are covered. Additionally, all employees are covered by FLSA 3(s)(1)(A) enterprise coverage. The company declined to provide exact figures, but assured that the organization's Annual Dollar Volume (ADV) is well over \$500,000. Additionally, employees handle goods that have moved in interstate commerce such as medical supplies. (See exhibit C-1)

Section 3(d) Employer:

The employers as defined by §3(d) of the FLSA are all members of the board of directors. The board of directors creates all business policy and makes the day to day business decisions.

MODO:

The case was associated with the MODO (Minneapolis, MN) on 7/30/13. (b) (7)(E)
(See exhibit D-1)

Denver DO contacted the MODO on 10/21/13 regarding possible actions pertaining to company-wide compliance. The MODO instructed to handle locally because the employer agreed to comply. (See exhibit D-2)

Exemptions

WHD did not explore FLSA exemptions due to the limited nature of the investigation.

Status of Compliance

The limited investigation was initiated by (b) (7)(E), (b) (6), (b) (7)(C), (b) (7)(E).
(b) (6), (b) (7)(C) was instructed to express breast milk in a shower stall, which is not an adequate space as defined by FLSA §7(r)(1)(B). (b) (6), (b) (7)(C) also (b) (7)(E), (b) (6), (b) (7)(C) sometimes missed (b) (6), (b) (7)(C) pumping break because the space was occupied. WHD (b) (7)(E)

Violations Summary:

WHD cited a violation under the Nursing Mothers provision of FLSA§7 because the employer did not provide an appropriate space for nursing mothers which was not a bathroom and was free from public intrusion.

Prior History:

The Fargo establishment of Essentia Health was investigated in 2012. A Family Medical Leave Act (FMLA) violation was cited for denial of leave to an eligible employee. The organization incorrectly designated certain hours as FMLA leave when the hours were worked, thus reducing the amount of leave available to the employee. (b) (7)(E)
(b) (7)(E) but the employee was not due back wages. (See case ID 1667328)

Section 6:

Not explored due to limited nature of investigation.

Section 7:

WHD cited a violation under the Nursing Mothers provision of FLSA§7 because the employer did not provide an appropriate space for nursing mothers which was not a bathroom and was free from public intrusion.

(b) (6), (b) (7)(C) (b) (7)(E) (b) (6), (b) (7)(C) employer provided a shower stall in a locker room to pump. (b) (6), (b) (7)(C) stated that other employees frequently walked in on (b) (6), (b) (7)(C) when (b) (6), (b) (7)(C) was pumping and sometimes the shower stall was unavailable because another employee was showering or pumping. Additionally, (b) (6), (b) (7)(C) personal effects frequently got wet from water in the shower stall. An employee interview with another nursing mother (who was not covered by the Nursing Mothers provision of the FLSA) confirmed that the employer expected employees to pump in the shower stall. (See exhibits B-1 and B-2)

The initial photographs provided by the employer misrepresented the space. The photos presented the space as a separate enclosed area and therefore distinct from the bathroom. However, (b) (6), (b) (7)(C) presented other photos which demonstrated that the pumping area was connected to a functional shower. Although WHD initially determined that the space was acceptable due to the employer's photos, the new photos demonstrated that the pumping area was in close proximity to a functioning shower and therefore must be defined as a bathroom. Additionally, anyone using the shower must walk through the pumping area and therefore the space is not free from public intrusion. (See exhibits E-1 to E-4)

When the pumping area located in the shower stall was unavailable, (b) (6), (b) (7)(C) sometimes had to miss (b) (6), (b) (7)(C) pumping break. Although the employer offered other spaces, such as a conference room, these spaces were not free from public intrusion and on one occasion a male security guard walked in on (b) (6), (b) (7)(C) while (b) (6), (b) (7)(C) was pumping. (See exhibit B-1)

(b) (6), (b) (7)(C) also (b) (7)(E) the employer called a meeting to inform (b) (6), (b) (7)(C) that the pumping breaks were too long. The employer clarified that the meeting addressed (b) (6), (b) (7)(C) responsibility to inform (b) (6), (b) (7)(C) supervisor when (b) (6), (b) (7)(C) needed a pumping break because (b) (6), (b) (7)(C) required a longer pumping break than most. Both (b) (6), (b) (7)(C) and the employer acknowledged that this issue was resolved before WHD's involvement. (See exhibits B-1 and C-1)

Additionally, (b) (6), (b) (7)(C) (b) (7)(E) (b) (6), (b) (7)(C) pumping breaks were sometimes interrupted due to work. The employer required that (b) (6), (b) (7)(C) arrive at a particular location immediately when (b) (6), (b) (7)(C) received a "stat" page and was working alone instead of in a pair. According to (b) (6), (b) (7)(C) worked alone about 10% of the time because the hospital was previously understaffed. By the time the investigation began, the hospital was fully staffed and (b) (6), (b) (7)(C) acknowledged that the issue was resolved. (See exhibit B-1)

WHD interviewed another nursing mother employed at Essentia Health who confirmed (b) (6), (b) (7)(C) statement and identified some additional issues regarding lack of available space and supervisor harassment about pumping breaks. However, this employee gave birth (b) (6), (b) (7)(C) and began working at Essentia Health (b) (6), (b) (7)(C)

Because more than a year had passed, this employee was not covered by the Nursing Mothers provision of the FLSA. (See exhibit C-2)

Section 11:

Not explored due to limited nature of investigation.

Section 12:

Not explored due to limited nature of investigation.

Disposition

Director of HR Compliance Christine Hlavac and WHI (b) (6), (b) (7)(C) held a final conference via telephone on 10/23/13. The participants discussed coverage, future compliance, and employer concerns regarding the Nursing Mothers provision of the FLSA.

WHI (b) (6), (b) (7)(C) explained that the new photographs of the shower stall demonstrated that the area was a functional bathroom and therefore an unacceptable space for the purposes of expressing milk. Additionally, (b) (6), (b) (7)(C) (b) (7)(E) other employees sometimes used the shower stall while a nursing mother pumped and therefore there was no reasonable expectation of privacy. The employer stated that Essentia Health was unaware of this situation, if true. Essentia Health believed that the shower stall provided a reasonable expectation of privacy and was not considered a bathroom. The employer found alternate locations and assured that nursing mothers were no longer expected to use the shower stall to pump. The employer emailed photos of these alternate locations to WHD. Additionally, an annex currently under construction at the Fargo establishment (due to be completed January 2015) would include 3 rooms exclusively for use by employee nursing mothers. **The employer agreed to comply in the future by continuing to identify appropriate locations with locking doors, other than bathrooms, for the purposes of expressing milk until construction is completed on the designated nursing mother rooms.** (See exhibits D-9, D-10, D-12, E-5, E-6, E-7, and E-8)

WHD and Essentia Health discussed (b) (6), (b) (7)(C) (b) (7)(E) (b) (6), (b) (7)(C) missed pumping breaks when (b) (6), (b) (7)(C) received a "stat" page and worked alone in a previous teleconference on 7/31/13. The employer stated that (b) (6), (b) (7)(C) is only on call for "stat" pages for 10% of (b) (6), (b) (7)(C) shift and it is scheduled. (b) (6), (b) (7)(C) should know the schedule and arrange not to have to take pumping breaks during that 10% of the day. WHD did not seek a specific agreement to comply regarding this provision because (b) (6), (b) (7)(C) acknowledged that the issue was resolved and WHD considered the employer's proposition that (b) (6), (b) (7)(C) schedule pumping breaks around (b) (6), (b) (7)(C) on-call schedule to be reasonable.

The employer explained that the Nursing Mothers provision of the FLSA in general and this investigation in particular presented a challenge for Essentia Health because DOL has issued limited guidance on nursing mother

WHD notified (b) (6), (b) (7)(C) of Essentia Health's agreement to comply by voicemail message on 10/25/13.

<u>Pubs:</u>	<u>HRG</u>			
	<u>WHD Fact Sheet 73</u>			

October 25, 2013

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1715038 Originating District: Dallas TX District Office
Local Filing Number: 2014-167-15411 Investigating District: Dallas TX District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 12/19/2013
Assignment Date: 12/19/2013

Employer Information

Trade Name: Rapid + Med Urgent Care Center Legal Name: North Texas Emergency Physicians, PA
Address: 2940 Justin Rd. Suite# 302 EIN: 03-0587525
County: Denton
NAICS Code: 621498
Lewisville, TX 75077 No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 12/23/2011 BNPI: 0
To: 12/22/2013 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

Total Violations Under FLSA: 1 \$0.00

WHISARD Compliance Action Report

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

FMLA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FMLA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

Hours: 36 - - COV: FLSA Ent. Cov when ER ADV > \$500k & 2+ EEs engaged in IC. SC: Sec 207 vio for failure to provide adequate space when 1 NM asked to use bathroom to express milk. No Sec 211 vio found. DISP: ER ATC. No prior history. No BWs computed. REC: (b) (7)(E) / close.

WHI Signature: _____ Date: 03/27/2014

Reviewed By: _____ Date: _____

North Texas Emergency Physicians, PA

Dbas: Rapid + Med Urgent Care Center

2940 Justin Rd., Suite #302

Highland Village, Texas 75077

Phone: 972-966-1980

Fax: 469-635-2059

Case ID: 1715038

Cross Reference with Case ID: 1715038

LFN: 2014-167-15501

EIN: 03-0587525

Employer Representative:

Janet Hendrick, Attorney

500 North Akard St, Suite 3550

Dallas, TX 75201

Phone: (214) 220-8326

Fax: (214) 220-9122

Email: jhendrick@laborlawyers.com

FLSA / FMLA NARRATIVE REPORT

COVERAGE:

Nature of Business: The subject firm is a family practice and urgent care clinic providing healthcare services to the general public. Ms. Janet Hendrick, Attorney is the primary contact person and can be reached by phone at: 214-220-8326.

FLSA Enterprise Coverage: FLSA enterprise coverage applied during the entire investigation period under section 3(s)1(A) of the provisions of the Fair Labor Standards Act (FLSA). Subject firm reported having more than two employees engaged in commerce (accepting credit cards) and handling goods or materials that have been moved in commerce (medication / clinical supplies ordered from out of

state and delivered by mail) and was an enterprise whose annual gross volume of sales exceeded \$500,000 (exclusive of excise taxes at the retail level that are separately stated) (See Exhibit C-1).

Annual Dollar Volume (ADV): The Annual Dollar Volume of Sales, exclusive of excise taxes for 2010, 2011, 2012, and 2013 was: (b) (4), respectively (See Exhibit C-2).

FLSA Individual Coverage: Individual coverage was found applicable to all employees of the firm. Front office receptionists accept credit card payments from patients for services rendered (See Exhibit C-1). Back office nursing employees generate, modify and maintain electronic patient charts which are utilized directly by business office staff to bill private and public insurance companies (See Exhibit C-1). Many of these insurance companies are located out of state and billed electronically, by fax, or by mail (See Exhibit C-1).

FMLA Coverage: The employer was not a Covered Employer when it did not employ more than 50 employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year (See Exhibit E-1).

Organization of the Business: Subject firm is a Domestic Professional Association (PA) registered under the name of North Texas Emergency Physicians, PA and is doing business as Rapid + Med Urgent Care Center. The firm maintains a home office address of 2940 Justin Rd., Suite #302, Lewisville, Texas 75077. Subject firm commenced operations in Texas on 01/10/2006 (See Exhibit C-1). The Governing Board of the firm include Dr. John Gomez and Dr. Rebecca Gomez (husband and wife) who reside at 2483 Britt Drive, Argyle, TX 76226 and can be reached by phone at 940-464-0361 (See Exhibit C-3). There were no other branches or offices reported during the investigation period.

Period for Investigation: This investigation was limited to a compliance review of FLSA Section 207(r) – Nursing Mothers requirements spanning the investigation period of 12/23/2011 through 12/22/2013.

Reason for Investigation: This investigation was initiated (b) (7)(E) (b) (6), (b) (7)(C) employed by the firm (Reference concurrent FLSA 15(a)3

investigation registered under Case ID: 1716116). (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) This investigation was limited to address the (b) (6), (b) (7)(C) (b) (7)(E) under FMLA and FLSA / Nursing Mothers.

Initial Conference: The initial conference was held on 12/02/2014 at the establishment located at the address listed above. Ms. Barbie Fiorendino, Office Manager and Mr. Mark Mayer, Attorney represented the firm at this meeting. Wage and Hour was represented by Wage and Hour Investigator (b) (6), (b) (7)(C)

Section 3(d) employer: A number of individuals meet the FLSA Section 3(d) definition of employer on behalf of this firm when they act directly or indirectly in the interest of an employer in relation to the employee by hiring, firing, establishing rates of pay, and directing the work of the individuals employed by the firm (See Exhibits B-7 through B-1 and C-1). These individuals include: Dr. John Gomez (Physician / Owner), Dr. Rebecca Gomez (Physician / Owner), Barbie Fiorendino (Office Manager), and (b) (6), (b) (7)(C) (Back Office Manager). Additionally, (b) (6), (b) (7)(C) (Physician Assistant, PA-C) and (b) (6), (b) (7)(C) (Physician Assistant, PA-C) directed the work of back office nursing staff and conducted annual evaluations of staff performance (See Exhibits C-1 and E-6 through E-4).

MODO: The firm is not a multi establishment entity.

Prior History: No prior history was found for the firm.

EXEMPTIONS:

No exemptions were explored as this investigation centered on FLSA Section 207(r) – Nursing Mothers compliance.

STATUS OF COMPLIANCE:

FMLA: No violation cited. The firm was not a covered employer subject to the FMLA therefore (b) (6), (b) (7)(C) was also not an FMLA eligible employee. Review of the firm's records did however show

that the firm allowed (b) (6), (b) (7)(C) leave for the birth of (b) (6), (b) (7)(C) (See Exhibit E-2).

(b) (7)(E) Information: (b) (6), (b) (7)(C) (b) (7)(E) Rapid Meds Urgent Care had failed to provide (b) (6), (b) (7)(C) a private location to express milk. (b) (6), (b) (7)(C) (b) (7)(E)

Sec. 206 (Minimum Wage): No violations cited. Investigation was limited to FLSA Section 207(r) – Nursing Mothers compliance.

Sec. 207 (Maximum Hours / Nursing Mothers): A violation occurred when the firm failed to provide a place (other than a bathroom) for one employee to express milk. Employee interviewed showed that (b) (6), (b) (7)(C), employed by the firm between (b) (6), (b) (7)(C) was asked to utilize a bathroom to express milk after (b) (6), (b) (7)(C) use of the Office Manager's office to express milk interfered with Dr. John Gomez's access to his personal bathroom contained therein (See Exhibit B-6 and B-5). (b) (6), (b) (7)(C) (b) (7)(E) also stated that the firm failed to give (b) (6), (b) (7)(C) reasonable break time to express milk each time (b) (6), (b) (7)(C) needed to when no one was available to relieve (b) (6), (b) (7)(C) during (b) (6), (b) (7)(C) shift and (b) (6), (b) (7)(C) was required to remain at (b) (6), (b) (7)(C) desk (See Exhibit B-6). The firm acknowledged (b) (6), (b) (7)(C) used bathroom to express milk (See Exhibit E-11).

**Note: (b) (7)(E) (b) (6), (b) (7)(C) regarding the firm's failure to provide a private space to express milk other than a bathroom was not supported because (b) (6), (b) (7)(C) reported utilizing the Office Manager's office and a patient exam room to express milk (See Exhibit B-7). (b) (6), (b) (7)(C) Back Office Manager and direct supervisor to (b) (6), (b) (7)(C) claimed (b) (6), (b) (7)(C) had no knowledge that (b) (6), (b) (7)(C) would need to express milk in the workplace (See Exhibit E-12). Coworkers of (b) (6), (b) (7)(C) and the Office Manager, Barbie Fiorendino claim to have knowledge even prior to (b) (6), (b) (7)(C) delivery of (b) (6), (b) (7)(C) child that (b) (6), (b) (7)(C) would be expressing milk at the workplace (See Exhibits B-7 through B-1, and E-11). (b) (6), (b) (7)(C) was only employed and physically at work for three (3) days after returning from leave for the birth of (b) (6), (b) (7)(C) child (See Exhibits B-3 and E-8). During this time (b) (6), (b) (7)(C) stated (b) (6), (b) (7)(C) found for (b) (6), (b) (7)(C) and utilized a patient exam room on Friday (07/05/2013) and the office of the Office Manager on Saturday and Sunday (07/06/2013 to 07/07/2013) (See Exhibits B-7, B-3, and B-2). Employee statement also supports (b) (6), (b) (7)(C) concern over the*

firm's failure to designate a specific space for her to express milk upon (b) (6), (b) (7)(C) return from maternity leave (See Exhibit B-2). The places utilized by (b) (6), (b) (7)(C) allowed for privacy (a door / covered windows) and were not a bathroom.

Sec. 211 (Investigations...Records...): No violations cited. Investigation was limited to FLSA Section 207(r) – Nursing Mothers compliance.

Sec. 212 (Child Labor Provisions): No violations cited. One minor was employed by the firm (b) (6), (b) (7)(C) during the investigation period. This minor was not originally disclosed. Employee statement lead to further investigation and when the firm was questioned WHI (b) (6), (b) (7)(C) was provided time records for the minor (See Exhibit B-3). According to the employer, the minor was hired on (b) (6), (b) (7)(C) and has been employed as needed through the present. The firm reported this minor was a part-time nursing assistant and would call patients back from the waiting room then perform blood pressure readings and check vital signs.

DISPOSITION:

A final conference was held at the office of the employer representative on 03/27/2014. In attendance were WHI (b) (6), (b) (7)(C) and Janet Hendrick, Attorney.

WHI (b) (6), (b) (7)(C) explained the provisions of the Fair Labor Standards Act (FLSA). Specifically, WHI (b) (6), (b) (7)(C) explained the Section 207 violation resulting from the firm's failure to provide adequate place (other than a bathroom) for (b) (6), (b) (7)(C), a nursing mother employed by the firm who required break time and a place to express milk at the establishment. WHI (b) (6), (b) (7)(C) explained to the firm that no violation was cited relevant to (b) (6), (b) (7)(C) reported utilizing the office manager's office and a patient exam room to express milk during the three days (b) (6), (b) (7)(C) worked after (b) (6), (b) (7)(C) return from medical leave. WHI (b) (6), (b) (7)(C) explained that both the patient exam room and the office manager's office would be considered suitable places as they were not bathrooms and were shielded from view and free from intrusion from coworkers and the public.

WHI (b) (6), (b) (7)(C) informed Ms. Hendrick that no violation was cited under the FMLA. Specifically, WHI

(b) (6), (b) (7)(C) explained how the firm was not covered under Family Medical Leave Act (FMLA) when it did not employ 50 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar years.

On behalf of the firm, Ms. Hendrick agreed to future compliance with all provisions of the Fair Labor Standards Act.

Steps to Achieve Compliance: To achieve compliance, Ms. Hendrick stated the firm will ensure nursing mothers are provided with reasonable break time to express milk and a place, other than a bathroom, which is shielded from view and free from intrusion.

(b) (6), (b) (7)(C): On 03/27/2014, (b) (6), (b) (7)(C) was contacted by phone and provided the investigation findings relevant to (b) (6), (b) (7)(C) claims.

Publications Furnished: Handy Reference Guide, Part 785 – Hours Worked Under the Fair Labor Standards Act of 1938 As Amended, Child Labor Bulletin 101, Part 516 – Records to be Kept by Employers, Part 541 – Defining and Delimiting the Exemptions, Part 778 – Interpretative Bulletin On Overtime Compensation, and Fact Sheet #73 – Break Time for Nursing Mothers.

SBREFA: WH Publication 1282 (Handy Reference Guide to the Fair Labor Standards Act) was provided to the employer.

Other Laws Violated: Not applicable.

CMP'S/Recommendation: (b) (7)(E)
Case is being submitted for (b) (7)(E) closure.

(b) (6), (b) (7)(C), Wage & Hour Investigator
March 27, 2014

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1717723 Originating District: Northern NJ District Office
Local Filing Number: 2014-269-00122 Investigating District: Northern NJ District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 01/23/2014
Assignment Date: 02/04/2014

Employer Information

Trade Name: Securitas Security Service Legal Name: Securitas Security Services USA
Address: 7555 East Hampden Avenue; Suite 610 EIN: 71-0912217
County: Denver
NAICS Code: 561621
Denver, CO80231 No. Of Employees: (b) (6)

Investigation Information

Period Investigated From: 07/01/2012 BNPI:
To: 07/31/2013 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

This investigation (b) (7)(E) didn't receive an accommodation as a nursing mother. (b) (7)(E) The firm agreed to future compliance through training an annual webinar for management and EEO handout to supervisors along with inclusion in 2014 handbook. There was a concurrent state of Colorado action which has been monetarily resolved. This case is submitted on May 2, 2014.

WHI Signature: _____ Date: 05/02/2014

Reviewed By: _____ Date: _____

Securitas USA
4330 Park Terrace Drive
Westlake Village, CA 91361
Phone: 818-706-5611
Fax: 818-706-5037
EIN: 71-0912217
Case ID: 1717723

FLSA Nursing Mothers NARRATIVE REPORT

Reason for Investigation: The investigation was initiated (b) (7)(E) (b) (6), (b) (7)(C)
the firm didn't make an accommodation for (b) (6) as a nursing mother. (b) (7)(E)

Coverage (Employer)

The subject firm is the global leader in security providing guard services tailored to the needs of their clients ranging from retail to special events in 51 countries. The firm's main corporate office is located at 2 Campus Drive, Parsippany, NJ.

The period of investigation is July 2012 - July 2013 and was limited to (b) (6), (b) (7)(C)

Prior History: There are 182 previous investigations for the laws Wage and Hour enforces (See Exhibit E12 - E16).

FLSA - 126 concluded cases, 1 in active follow-up and 1 current investigation.

FMLA - 36 concluded cases.

FLSA NM - 1 previous case in 2012 in Indiana.

SCA - 17 concluded SCA cases.

MODO: The Northern NJ DO is the MODO.

Eligibility (Employee)

(b) (6), (b) (7)(C) was eligible for FMLA because (b) (6), (b) (7)(C) had worked for the facility as a full-time non-exempt security guard (b) (6), (b) (7)(C)

Qualifying Condition/Serious Health Condition: (b) (6), (b) (7)(C) took FMLA leave after the birth (b) (6), (b) (7)(C)

Notification to Employer by Employee: (b) (6), (b) (7)(C) didn't have any problem with (b) (6), (b) (7)(C) FMLA leave.

Status of Compliance

The firm granted (b) (6), (b) (7)(C) 12 weeks of leave which was completed in (b) (6), (b) (7)(C) Prior to returning to work, (b) (6), (b) (7)(C) informed the firm that (b) (6), (b) (7)(C) intended to continue to express milk and needed a place to do this. (b) (6), (b) (7)(C) and the firm had some options and (b) (6), (b) (7)(C) returned to work. Once (b) (6), (b) (7)(C) returned to work, none of the options came to fruition in (b) (6), (b) (7)(C) opinion. There was another location (Kings grocery store) within a short drive of (b) (6), (b) (7)(C) duty station (Sysco). This site has 5 employees per shift whereas (b) (6), (b) (7)(C) was the only person at (b) (6), (b) (7)(C) site. In late June 2013, (b) (6), (b) (7)(C) was transferred there and then terminated (b) (6), (b) (7)(C)

The firm stated:

- The employee was offered other positions but declined them.
- (b) (6), (b) (7)(C) stated (b) (6), (b) (7)(C) no longer needed an accommodation only to come back a few weeks later stating that (b) (6), (b) (7)(C) did.
- They tried several options to work with (b) (6), (b) (7)(C) prior to (b) (6), (b) (7)(C) dismissal
- (b) (6), (b) (7)(C) was terminated due to excessive tardiness and callouts
- There is a current state of Colorado action. The firm has offered (b) (6), (b) (7)(C) 6 assignments and (b) (6), (b) (7)(C) has turned them down and doesn't want to return to work. As of April 16, 2014, the firm resolved the action with the Department of Regulatory Agencies Colorado Civil Right Division for a monetary settlement for (b) (6), (b) (7)(C) (See Exhibit E17- E20).

Future compliance:

Inclusion of a FLSA NM in the 2014 revision of the handbook which will be distributed to all employees May 2014 (See ExhibitA1).

The firm holds monthly webinar training for HR field management, account managers, and branch managers on various topics. In April there will be a webinar on pregnancy and lactation. This is

the first time this webinar will be given but it will become part of the annual rotation of training (See Exhibit A17 - A46).

The firm is working on a two page handout for site supervisors (immediate supervisors for security guards) for various different EEO subjects including leaves of absences, accommodations (FLSA NM) and complaints. This document will detail scenarios to the field and give guidance on when to follow-up with HR and/or management. Each employee will have to sign an acknowledgement form for this document and the handbook. This communication is key to ensure the lowest level management understands how to handle FLSA NM (See Exhibit A47 - A49).

The employee response:

(b) (6), (b) (7)(E) was offered positions making less money.

The state of Colorado is working on a settlement (financial) to finalize this action (See Exhibit E17 - E20).

Policy Review:

This investigation was limited to the nursing mother provision of the Act therefore a policy review wasn't completed.

Disposition

A final conference was held on April 16, 2014 with Annette Barber (VP HR) and Stephanie Rogazy (HR) to review the details of the investigation and future compliance with FLSA NM.

Recommendation: (b) (7)(E) (b) (6), (b) (7)(C) was informed of the results of the investigation on April 10, 2014. The file should be administratively closed.

Publications:

Emailed the firm a link to the DOL FMLA site

(b) (6), (b) (7)(C)

WHI Investigator

May 2, 2014

Securitas Security Service Case ID: 1717723

Any correspondence should be forwarded to:

Securitas USA
4330 Park Terrace Drive
Westlake Village, CA 91361
Attention: Stephanie Rogazy PHR Manager

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1724923 Originating District: Dallas TX District Office
Local Filing Number: 2014-167-15823 Investigating District: Dallas TX District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 04/03/2014
Assignment Date: 04/03/2014

Employer Information

Trade Name: Subway - Greenville Legal Name: Hunt County Oil Company
Address: 4303 Joe Ramsey Blvd EIN: 75-1293988
County: Hunt
NAICS Code: 722211
Greenville, TX 75402 No. Of Employees: (b) (6)

Investigation Information

Period Investigated From: 03/03/2014 BNPI:
To: 04/02/2014 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

16.5HR. Ind Cov - Credit Card Transactions. No applicable exemption. (b) (6), (b) (7)(C) /hr EE & a nursing mother w/ 2-wk old baby when (b) (6) started working for subject. (b) (7)(E) (b) (6) hours were reduced b/c (b) (6) is taking too long to pump. (b) (7)(E) (b) (6) pumped at bathroom. Information gathered didn't support (b) (6) hours were reduced b/c pumping nor support there's constructive discharge. Sec7(r) vio - using of bathroom was found. ER ATC. Provided: FS 44, 73, 77A, HRG, Reg516, 541, 785, 778, &CL101. RCMD closing

WHI Signature: _____ Date: 07/17/2014

Reviewed By: _____ Date: _____

Hunt County Oil Company
DBA Subway
4303 Joe Ramsey Blvd
Greenville, TX 75402

Case ID: 1724923
EIN: 75-1293988
2014-167-15823
903-455-9098

FLSA NARRATIVE REPORT

COVERAGE

The subject firm is a limited service restaurant serving submarine sandwich, inside a gas station/convenient store at Greenville, TX, with (b) employees (EEs). Mr. Stephen Ash (903-456-0296, gsa958@gmail.com).

FLSA Individual Coverage: Individual coverage was found applicable to all employees of the firm. All EEs, sandwich artists/cashiers and manager, handle credit card transactions on a daily basis (see Exhibit B-1, B-2, & B-4).

Period for Investigation: This investigation was limited to a compliance review of FLSA Section 207(r) – Nursing Mothers requirements spanning the investigation period of 3/3/14 through 4/2/14.

Reason for Investigation: This investigation was initiated (b) (7)(E) (b) (6), (b) (7)(C) herein after referred to as (b) (6), (b) (7)(C) (b) (7)(E) the firm reduced (b) (6) hours because (b) (6) was taking too long to pump. (b) also (b) (7)(E) (b) (6) was using the bathroom for pumping. This investigation was limited to address (b) (6), (b) (7)(C) (b) (7)(E) under FMLA and FLSA / Nursing Mothers.

MODO: The firm is not a multi establishment entity.

History: No prior history was found for the firm.

EXEMPTIONS

No exemptions were explored as this investigation centered on FLSA Section 207(r) – Nursing Mothers compliance.

STATUS OF COMPLIANCE

(b) (7)(E) Information: (b) (7)(E) the firm reduced (b) (6) hours because (b) (6) was taking too long to pump. (b) also (b) (7)(E) (b) (6) was using the bathroom for pumping. (b) (6), (b) (7)(C) (b) (7)(E) was not supported; however, (b) (7)(E) On 7/8/14, (b) (6) was contacted by

Hunt County Oil Company
DBA Subway
4303 Joe Ramsey Blvd
Greenville, TX 75402

Case ID: 1724923
EIN: 75-1293988
2014-167-15823
903-455-9098

phone and provided the investigation findings relevant to (b) (6) claims.

Sec. 206 (Minimum Wage): No violations cited. Investigation was limited to FLSA Section 207(r) – Nursing Mothers compliance.

Sec. 207 (Maximum Hours / Nursing Mothers): A violation occurred when the firm failed to provide a place (other than a bathroom) for one employee to express milk. The firm acknowledged (b) (6) used bathroom to express milk.

(b) (6), (b) (7)(E) regarding (b) (6), (b) (7)(C) hours being reduced by the manager because (b) (6), (b) (7)(C) was taking too long to pump was not supported. Manager, (b) (6), (b) (7)(C) stated (b) (6), (b) (7)(C) worked 18.29 hours on the 3rd week, instead of the 20-25 hours regular schedule, because (b) (6), (b) (7)(C) called in one day and left early one day due to personal reasons. (b) (6), (b) (7)(C) also stated (b) (6), (b) (7)(C) was not on the schedule the following week because (b) (6), (b) (7)(C) stated (b) (6), (b) (7)(C) has problems with (b) (6), (b) (7)(C) milk supply. (b) (6), (b) (7)(C) stated (b) (6), (b) (7)(C) told (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) is going to get a pump that (b) (6), (b) (7)(C) can wear all day and is going to take (b) (6), (b) (7)(C) baby to the doctor. (b) (6), (b) (7)(C) stated (b) (6), (b) (7)(C) was put back on the schedule the final week but quit after worked one day (See Exhibit B-4). The EE interview statements from two EEs who used to work with (b) (6), (b) (7)(C) did not support that (b) (6), (b) (7)(C) has any issue with (b) (6), (b) (7)(C) pumping breaks, time frames, or scheduled hours (see Exhibit B-1 & B-3). Information gathered throughout the course of investigation was unable to support that (b) (6), (b) (7)(C) hours were reduced due to being a nursing mother nor to support that there was constructive discharge.

Sec. 211 (Investigations...Records...): No violations cited. Investigation was limited to FLSA Section 207(r) – Nursing Mothers compliance.

Sec. 212 (Child Labor Provisions): No violations cited. Investigation was limited to FLSA Section 207(r) – Nursing Mothers compliance.

DISPOSITION

A final conference was held via phone on 7/17/14 with Mr. Ash, and WHI (b) (6), (b) (7)(C) representing WHD. WHI (b) (6), (b) (7)(C) explained the FLSA Section 207 violation resulting from the firm's failure to provide adequate

Hunt County Oil Company
DBA Subway
4303 Joe Ramsey Blvd
Greenville, TX 75402

Case ID: 1724923
EIN: 75-1293988
2014-167-15823
903-455-9098

place (other than a bathroom) for (b) (6) a nursing mother employed by the firm who required break time and a place to express milk at the establishment. Mr. Ash stated the space at the "Subway" that they are entitled to is limited, but stated he will talk to the owner of gas station/convenient store regarding using their stockroom*, with lock, for any nursing mother in the future. Mr. Ash agreed to compliance in the future.

**Per §779.225(d), the firm DBA Subway and the gas station/convenient store DBA Xpressway are not one enterprise, with different ownership, employees, records, hours of operation, etc.*

Publications Furnished: Fact Sheet 44, 73, 77A, HRG, Regulation 516, 541, 785, 778, and CL101 (Exhibit D-1)

CMP'S/Recommendation: (b) (7)(E)

Case is being submitted for (b) (7)(E) closure.

(b) (6), (b) (7)(C) Wage & Hour Investigator, 7/17/14

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1728125 Originating District: Albuquerque NM District Office
Local Filing Number: 2014-105-00503 Investigating District: Albuquerque NM District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 05/02/2014
Assignment Date: 05/02/2014

Employer Information

Trade Name: HGS Legal Name: Hinduja Global Solutions
Address: 12120 Rojas Dr. EIN: 73-1723493
County: El Paso
NAICS Code: 561421
El Paso, TX 79936 No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 08/11/2013 BNPI:
To: 05/04/2014 Reinvestigation: ☒
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Full Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

26.5 hours. NURSING MOTHERS CASE Enterprise coverage, ADV (b) (4). Section 207(r): ER did not provide a place, other than a bathroom, for EE to express breast milk. Section 212: No violations. ER ATC No monetary remedy.

WHI Signature: _____ Date: 07/07/2014

Reviewed By: _____ Date: _____

Hindu Global Solutions
dba HGS
12120 Rojas Dr.
El Paso, TX 79936
EIN: 73-1723493

2014-105-00503
Case ID#1728125

FLSA Narrative

Coverage

Subject firm is an inbound call center that provides services for AT&T and Windstream customers (callers from the Mid-West and Southwest part of the United States). The services provided are phone, satellite, and internet set up for new and existing customers to include upselling. Subject firm is located at 12120 Rojas Dr., El Paso, TX 79936. The legal name of subject firm is Hinduja Global Solutions Inc. and does business as HGS. The president and CEO of subject firm is Kathy Hamburger. Subject firm was incorporated in the state of Delaware in 2006.

The corporate headquarters for subject firm are located at the following address:

HGS USA Corporate Headquarters
4355 Weaver Parkway Suite 310
Warrenville, IL 60555

Enterprise coverage under FLSA 203(s)(1)(A) is applicable. The annual dollar volume (ADV) is as follows: 2013 - (b) (4), 2012 - (b) (4), and 2011 - (b) (4) (see exhibit C2 and D20).

203 (d) Employer: Ms. Shelley Hodelka meets the definition of "employer." Ms. Hodelka is the Recruitment and Retention Senior Manager. Ms. Hodelka is the individual that acts directly in the interest of the employer in relation to the employees.

MODO: The St. Louis, Missouri District Office is the MODO. (b) (7)(E)
No special instructions were received from the MODO.

Period of Investigation: 08/11/2013 to 05/04/2014

Scope of Investigation: This was a full nursing mother's investigation conducted by WHI (b) (6), (b) (7)(C)

History:

Case ID#1677357: No violations found (see exhibit D38-44).

FMLA: Coverage under the Family Medical Leave Act applies to subject firm. Subject firm has employed 50 or

more employees in 20 or more workweeks in the current and preceding calendar year.

Exemptions

None tested. This was a Section 207(r)-Nursing Mother's case.

Employment Relationship

The employees in this case were found to be in an employment relationship.

Status of Compliance

Reason for Investigation: (b) (7)(E) (b) (6), (b) (7)(C) (b) (7)(E) was never given an area to express breast milk when (b) (6) requested it; (b) (6) was told that (b) (6) could use the restroom. The investigation revealed that (b) (6) (b) (7)(E) were true, but no monetary remedy for (b) (6), (b) (7)(C) could be established.

Pay Practice:

Employees are paid on a bi-weekly basis. The work week is Monday to Sunday.

Section 207(r) – Nursing Mother's:

-Coverage:

(b) (6), (b) (7)(C) was not exempt from Section 207 therefore (b) (6), (b) (7)(C) was entitled to breaks to express milk. Subject firm employs more than (b) (4) employees at their El Paso, TX location.

-Information provided by (b) (6), (b) (7)(C) (see exhibit B-7):

(b) (6), (b) (7)(C) began working at Hinduja Global Solutions (HGS) (b) (6), (b) (7)(C). When (b) (6), (b) (7)(C) employment began (b) (6), (b) (7)(C) asked (b) (6), (b) (7)(C), Senior Human Resources Manager, and (b) (6), (b) (7)(C), Human Resources Coordinator, for a room to pump breast milk. (b) (6), (b) (7)(C) was told by both that there were no rooms available and that (b) (6), (b) (7)(C) could use the restroom.

After (b) (6), (b) (7)(C) completed the training (b) (6), (b) (7)(C) sent (b) (6), (b) (7)(C) several e-mail asking for a room to pump breast milk. (b) (6), (b) (7)(C) did not respond to (b) (6), (b) (7)(C) requests.

On or about February 2014, (b) (6), (b) (7)(C) talked to (b) (6), (b) (7)(C) manager, (b) (6), (b) (7)(C), and requested a room to pump breast milk. It was (b) (6), (b) (7)(C) understanding that (b) (6), (b) (7)(C) was going to speak with (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) never provided (b) (6), (b) (7)(C) with a response.

(b) (6), (b) (7)(C) resigned and is now working at another local call center. The pay is the same. (b) (6), (b) (7)(C) resigned one day and started working at the new place the very next day. (b) (6), (b) (7)(C) did not sign up for any benefits at HGS and does not intend to sign up for any at (b) (6), (b) (7)(C) new place of employment. (b) (6), (b) (7)(C) also stated that besides not being given a place to pump breast milk the other reason (b) (6), (b) (7)(C) resigned was because (b) (6), (b) (7)(C) group was sent home quite often (hours were cut) due to decreases in call volume.

-Information provided by subject firm employees:

- (b) (6), (b) (7)(C), Senior Human Resources Manager (see exhibit B-6): (b) (6), (b) (7)(C) asked if (b) (6), (b) (7)(C) could be provided with a room to pump breast milk and (b) (6), (b) (7)(C) told (b) (6), (b) (7)(C) that there were no empty offices or rooms that (b) (6), (b) (7)(C) could use. (b) (6), (b) (7)(C) stated that the only private place (b) (6), (b) (7)(C) could use on the premises was the ladies restroom. (b) (6), (b) (7)(C) further stated that (b) (6), (b) (7)(C) made the decision on (b) (6), (b) (7)(C) own and did not contact anyone else regarding the request. (b) (6), (b) (7)(C) also stated that (b) (6), (b) (7)(C) told (b) (6), (b) (7)(C) that it was the law for HGS to provide (b) (6), (b) (7)(C) with a room and (b) (6), (b) (7)(C) told (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) needed to bring medical documentation if it was a medical condition to be accommodated.
- (b) (6), (b) (7)(C), Human Resources Coordinator (see exhibit B-1): Recalls being asked by an employee for a room to pump breast milk and (b) (6), (b) (7)(C) told the employee they did not have a room (b) (6), (b) (7)(C) could use. (b) (6), (b) (7)(C) suggested the restroom.
- (b) (6), (b) (7)(C), Operations Team Leader (see exhibit B-4): (b) (6), (b) (7)(C) asked (b) (6), (b) (7)(C) for a room to pump April 2014. (b) (6), (b) (7)(C) told (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) would address it with (b) (6), (b) (7)(C) did not address it with (b) (6), (b) (7)(C). When (b) (6), (b) (7)(C) asked for a status (b) (6), (b) (7)(C) went ahead and addressed it with (b) (6), (b) (7)(C). (b) (6), (b) (7)(C) never touched base again with (b) (6), (b) (7)(C) regarding a room for (b) (6), (b) (7)(C) to pump breast milk.
- The other employees that were interviewed were unaware of (b) (6), (b) (7)(C) request or did not become involved (see exhibits B2, B3, and B-5).

-Violation:

Section 207(r)(1)(B): Subject firm did not provide (b) (6), (b) (7)(C), a place, other than a bathroom, to express breast milk.

No monetary remedy could be established for (b) (6), (b) (7)(C).

Section 212(c) Child Labor: A tour of establishment indicated compliance.

Disposition

On June 9, 2014 a final conference was held with Ms. Shelley Hodelka and Ms. Angie Lozano. Representing the Department of Labor was Wage and Hour Investigator (b) (6), (b) (7)(C) (WHI (b) (6), (b) (7)(C)

FLSA provisions regarding coverage, exemptions, and nursing mother's provisions were discussed as well as the period of investigation. Any questions or concerns were addressed accordingly. At this time subject firm indicated that they would comply with the regulations of the Act to ensure future compliance. Subject firm was notified of the violations found and agreed to future compliance by:

- Providing further training their entire human resources staff.
- Developing training for front line supervisory staff, to include positions at the Team Leader, Operations Manager, and Site Director levels on the rules and requirements.
- Ensure that all locations have the proper space available for nursing mothers.

During the final conference Ms. Hodelka state that (b) (6), (b) (7)(C) was no longer employed with subject firm.

Publications Provided: HRG, FLSA, and Fact Sheets # 28D, 44, 73, and 77A.

Recommendations: Recommend this case file be administratively closed.

(b) (6), (b) (7)(C) **Notification:** (b) (6), (b) (7)(C) was informed of the findings on July 7, 2014.

Future correspondence should be sent to:

Ms. Shelley Hodelka
12120 Rojas Dr.
El Paso, TX 79936
shelley.hodelka@teamhgs.com
(502) 855-0666

(b) (6), (b) (7)(C)
WHI
07/07/2014

WHISARD Compliance Action Report

U.S. Department of Labor Wage and Hour Division

Case ID: 1734896 Originating District: Denver CO District Office
Local Filing Number: 2014-174-10655 Investigating District: Denver CO District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 07/15/2014
Assignment Date: 07/15/2014

Employer Information

Trade Name: Ideal Image Legal Name: Ideal Image Group of Colorado
Address: 9623 -A East County Line Road EIN: 80-0883003
County: Arapahoe
NAICS Code: 621498
Englewood, CO80112 No. Of Employees: (b) (6)

Investigation Information

Period Investigated From: 07/19/2012 BNPI:
To: 07/18/2014 Reinvestigation: ☒
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

Total Violations Under FLSNM: 2 \$0.00

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

Ent Cov 203(s)(1)(A). Sec 207(r): ER did not provide adequate frequency, time, or privacy for nursing mother breaks. FC held by phone on 9/4/14 w/ Terri Hoskins, VP of HR; Jennifer Clift, Reg. Dir.; and Rosetta Warren, Dir of HR. ER ATC. No BWs due. One employee involved. Rec admin closing. Pubs: HRG, Fact Sheet #73.

WHI Signature: _____ Date: 09/04/2014

Reviewed By: _____ Date: _____

FEIN: 80-0883003

Investigated: Ideal Image
Location: 9623-A East County Line Rd.
Englewood, CO 80112
Phone: 720- 606-2873

Contact: Rosetta Warren, Director of HR
Cell: 813-549-2754
Phone: 813-286-8100
Email: Rosetta.Warren@Idealimage.com

Headquarters: Ideal Image Development, Inc.
4830 W. Kennedy Blvd. Suite 440
Tampa, FL 33609
Phone: 813-286-8100

Send future correspondence to: Rosetta Warren, Dir. of HR, HQ contact information above.
and

Jennifer Clift, Regional Director CO, NV. ID
9623-A East County Line Rd.
Englewood, CO 80112
Phone: 720- 606-2873
Jennifer.clift@idealimage.com

Coverage:

Ideal Image is a clinic that specializes in limited cosmetic procedures such as tattoo removal, laser hair removal, and injections to reduce facial wrinkles. The company was formed in Colorado on January 10, 2013 under the legal name of Ideal Image Group of Colorado, PLLC. There are currently [REDACTED] full time and [REDACTED] part time employees none of whom are minors. The company is a wholly owned subsidiary of Ideal Image Development, Inc. which is headquartered in Tampa, Florida and has approximately 120 company owned establishments across the country and an undisclosed number of franchised locations, also located throughout the US. The officers of the parent company are as follows: CEO, Leonard Fluxman; President, Bruce Fabel; CFO, Stephen Lazarus; Secretary, Robert Boehm; and Vice President, Rob Lazar. Ideal Image Development, Inc. operates as a subsidiary of Steiner Leisure Limited. Percentages of ownership were not provided. (See exhibits C1 and C2.)

The investigative period of 7/19/12 through 7/18/14 was shortened because the investigated location was not operating until 1/2013. During the period of 1/2013 until 7/18/14, all employees were covered on an enterprise basis under FLSA section 3(s)(1)(A) based on the Annual Dollar Volume (ADV) which was not provided but claimed to be well in excess of \$500,000 for the enterprise in 2012 and 2013. In addition, the Annual Dollar Volume (ADV) for the establishment was (b) (4) for 2013 which is the year prior to the onset of the violation

period. Furthermore, the employees regularly handle products that had been in interstate commerce such as paper goods and medical supplies. (See exhibit C1.)

The Handy Reference Guide to the Fair Labor Standards Act (FLSA) was provided to the employer at the initial conference, July 18, 2013. Currently there are no private suits against the establishment under section 16(b) of the FLSA. (See exhibit C1.)

3(d) employer: The Regional Director of CO, NV, and ID, Jennifer Clift, oversees the operations of the establishment, hires and fires, and although she does not make policy decisions regarding the operation of the company, she is entrusted to enforce them. As such, she qualifies as a 3(d) employer. (See exhibits B1, B2, B4 and C1.)

MODO: (Tampa, Florida) MODO was contacted August 20, 2014. (b) (7)(E)
(See exhibit D1.)

Exemptions:

13(a)(1) professional exemption was not claimed nor found applicable to (b) (6), (b) (7)(C) who is a registered nurse. Although (b) (6), (b) (7)(C) was hired because of (b) (6), (b) (7)(C) advanced training and practiced (b) (6), (b) (7)(C) nursing skills at the establishment, (b) (6), (b) (7)(C) is paid hourly so the professional exemption does not apply. Other exemptions were not explored due to the limited nature of the investigation.

Status of Compliance:

This investigation was limited to the FLSA break time for nursing mothers (b) (7)(E) (b) (6), (b) (7)(C) claimed that (b) (6), (b) (7)(C) was not provided with the time (b) (6), (b) (7)(C) needed to express breast milk during (b) (6), (b) (7)(C) working hours. (b) (6), (b) (7)(C) also was not provided with the privacy (b) (6), (b) (7)(C) needed during these breaks. A discussion with the employer (b) (7)(E) (b) (6), (b) (7)(C) claim. (See exhibit B3.)

Violations Summary:

Section 207 violations resulted from not providing a nursing mother with regular and adequate times and privacy for pumping breast milk. (See exhibit B3.)

Prior history:

There is prior history. (See exhibits E1 and E2.)
Case #1592329 – concluded 4/26/2011

Sec 207 - employees paid straight time for overtime.

Sec 207 – no overtime paid to non-exempt salaried employees

Back wages of \$6529.19 to 7 employees and \$3272.50 in CMPs for willful and repeated violations.

Case #1698083 – concluded 2/13/2014

Sec 207 – 7(i) exemption violation (b) (7)(E)

Establishment may not be a qualified retail establishment so WHD is relying on courts to decide issue and did not deny exemption.

Section 206:

Not explored due to limited nature of the investigation.

Section 207:

Violations of the nursing mother's provisions of the FLSA resulted from not providing adequate breaks to express milk when needed because of (b) (6), (b) (7)(C) work schedule. (b) (6), (b) (7)(C) did not always get (b) (6), (b) (7)(C) breaks if one client's time ran up against the next client. At a meeting, managers (Jennifer Clift and (b) (6), (b) (7)(C)) met with (b) (6), (b) (7)(C) to address the fact that the breast pumping breaks were not working with the company's schedule. During her WHD interview, (b) (6), (b) (7)(C) claimed that (b) (6), (b) (7)(C) was told by management that another employee had complained about having to work around the mother's pumping breaks. The spaces provided were adequate (break room or treatment rooms, depending on what was available) but (b) (6), (b) (7)(C) was subjected to co-worker's interrupting (b) (6), (b) (7)(C) breaks to alert (b) (6), (b) (7)(C) to the fact that (b) (6), (b) (7)(C) next client had arrived or because they wanted to get food from the refrigerator.

Section 211:

Not explored due to limited nature of the investigation.

Section 212:

There are no apparent violations.

Disposition:

The final conference was held by phone on September 4, 2014 with Terri Hoskins, Vice President of human Resources; Jennifer Clift, Regional Director of NV, ID, and CO; Rosetta Warren, Director of Human Resources; and WHD Investigator, (b) (6), (b) (7)(C). Coverage as was the investigative process was first discussed.

A review of the original situation that brought WHD into the situation was reviewed including that the manager, Jessica Baxter, claimed that (b) (6), (b) (7)(C) received the same work load as the other nurses but that the other employees were trying to accommodate (b) (6), (b) (7)(C) need for pumping breaks. It was pointed out by

WHD that adequate time to pump and privacy from not only the public but co-workers, were parts of the law in addition to the area of the law that was not at issue (adequate space). It was also pointed out that compliance could not be based on other employees' willingness to cooperate. It was the employer's responsibility to provide for the needs of the employee. To correct the situation, the employer provides the daily schedule to the mother for (b) (6), (b) (7)(C) review and (b) (6), (b) (7)(C) breaks are being treated as appointment times now. If (b) (6), (b) (7)(C) sees a problem like two back to back long appointments scheduled for (b) (6), (b) (7)(C) lets management know and schedules are switched between employees. In addition, (b) (6), (b) (7)(C) is provided with a dressing room for each break and no longer takes any of (b) (6), (b) (7)(C) pumping breaks in the break room to avoid a lack of privacy from co-workers. **The employer agreed to comply in the future by providing adequate frequency, adequate break lengths, and privacy for nursing mother breaks.**

Recommend closing administratively.

(b) (6), (b) (7)(C) was contacted to share the results of the case on September 4, 2014.

Pubs: FLSA HRG Fact Sheet #73

(b) (6), (b) (7)(C), Investigator
September 4, 2014

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1736774 Originating District: New Orleans LA District Office
Local Filing Number: 2014-260-09928 Investigating District: New Orleans LA District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 08/04/2014
Assignment Date: 08/04/2014

Employer Information

Trade Name: Our Lady of the Lake Regional Medical

Legal Name: Our Lady of the Lake Hospital, Inc

Address: 5000 Hennessy Blvd

EIN: 72-0423651

County: East Baton Rouge

NAICS Code: 622110

Baton Rouge, LA70808

No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 08/13/2012

BNPI:

To: 08/11/2014

Reinvestigation: ☐

Investigation Type: (b) (7)(E)

Recurring Violation: ☐

Investigation Tool: Limited Investigation

Future Compliance Agreed: ☒

Compliance Status: Agree to Comply

Involved in AG: ☐

Recommended Action:

BWFS: ☐

RO/NO Review: ☐

CMP: ☐

Follow Up Investigation: ☐

Litigation: ☐

Other Action: ☐

Civil Action: ☐

Denial of Future Certificate: ☐

Criminal Action: ☐

BW Payment Deadline:

Submit For Opinion: ☐

Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

20.5 Hours. Sec3(s)1(b) Hospital Cov. (b) (7)(E) Sec3(r)1(B) Violations as ER failed to provide a space other than bathroom for lactating mothers. (b) (7)(E)
Employer ATFC by providing s space that is not a bathroom, shielded from view and free from intrusion. PUBS provided H R G, Fact sheets # 21, fact sheets 21, 22, 23, 28 D, 73, 77A, Part 516, 778 and 785. Case is recommended to be closed (b) (7)(E)

WHI Signature: _____ Date: 08/13/2014

Reviewed By: _____ Date: _____

Our Lady of the Lake Hospital, Inc.
Dba: Our Lady of the lake Regional Medical Center
5000 Hennessy Blvd
Baton Rouge, LA 70808
EIN: 62-1861175

FLSNM - Narrative

COVERAGE

An initial conference was held at the establishment on 08/11/2014. Present was Mrs. Lulu Ford Vice President of Human Resources, Mrs. Melissa M Shirley Attorney at Law, Farrar Anderson Human Resources Director, Bernard Brown Human Resources Business Partner and Phyllis Simmons Director Of Regulations. WHI (b) (6), (b) (7)(C) Represented Wage and Hour division. WHI (b) (6), (b) (7)(C) Provided Mrs. Ford a copy of the Handy Reference Guide, Fact sheets # 21, fact sheets 21, 22, 23, 28 D, 73, 77A, Part 516, 778 and 785.

Nature of Business:

Subject firm, Our Lady of the Lake Regional Medical Center, is the hospital.

Business Structure: Our Lady of the Lake Regional Medical Center is one of 5 entities under Franciscan Missionaries of Our Lady Health System. Our Lady of the Lake Regional Medical Center operates as a nonprofit corporation under the legal name Our Lady of the Lake Hospital, Inc. (See exhibit C-2).

Period of this Investigation: 08/13/2012 through 08/11/2014.

Gross Sales Figures: See exhibits C-2-B and C-4-a through C-6-b.

2013: (b) (4)
2012: (b) (4)
2011: (b) (4)

3(s)1(b) Health care Coverage is applicable for the entire investigative period.

Section 3(d) Employer:

(b) (6), (b) (7)(C) Divisional Director qualifies as a 3(d) employer, and is actively engaged in the management of the ER department. According to the Mrs. Ford, **(b) (6), (b) (7)(C)** acts directly in the interest of the business in relation to employees. **(b) (6), (b) (7)(C)** was directly involved in making recommendations in regards to interviewing, hiring, and firing employees. **(b) (6), (b) (7)(C)** also enforces and implements the firm's policies and supervises employees of emergency department (See C-3-e Exhibit).

Workforce:

The enterprise employs approximately **(b) (4)** employees. The emergency department employs **(b) (4)** employees per pay period. (See C-3-b exhibit).

MODO:

The business is located in Baton Rouge, Louisiana. Therefore, the MODO is the Wage & Hour New Orleans District Office. **(b) (7)(E)**

Limited Investigation:

Investigation was limited to hourly nursing mothers in the emergency department

EXEMPTIONS

Sec 13 (a) Exemptions were not explored due to the limited case action. **(b) (6), (b) (7)(C)** and affected individuals are hourly employees in emergency department.

STATUS OF COMPLIANCE

Limited Investigation: This Investigation was limited to the Nursing mothers in the emergency Department.

Prior History: Subject Firm has no prior FLSNM history.

(b) (7)(E)

Reason for Investigation: The case was initiated by (b) (7)(E) (b) (6), (b) (7)(C) (b) (7)(E) the employer failed to provide a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk as required under the Section 7 of the Fair Labor Standards Act, as amended by the Patient Protection and Affordable Care Act which took effect on March 23, 2010. (b) (6), (b) (7)(C) (b) (7)(E) lactating mothers in the ER department use the bathrooms in the ER lounge for lactating because the lactating room is not accessible for anyone and it is used as bathroom.

Section 6: was not explored due to the limited case action.

Section 7: Sec 7(r) Violations were applicable

The requirements under 7(r) of the FLSA were specifically addressed:

(1) An employer shall provide—

(A) a reasonable break time for an employee to express breast milk for her nursing child for 1 year after the child's birth each time such employee has need to express the milk; and

The employer provided a reasonable break time for the employee. The requirement is for a break when needed for a reasonable amount of time was met. There is no indication (b) (6), (b) (7)(C) could not go on a nursing break when needed (See Exhibits B-1, B-3 and C-3-f).

(B) a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to

express breast milk.

Employer had a designated bathroom as a lactating room. However, Mrs. Ford indicated that employees needed to activate their badges through the security office in order to access the room. She also stated that this room is sometimes used to shower children in the pediatric department when children needed larger space as the lactating room has a bigger shower (see Exhibits E-2 for pictures). Finally, Mrs. Shirley (Attorney) indicated that the records regards the access to the lactating room does not include names for lactating mothers in the ER department (See Exhibit D-2 and D-4 for list of individuals who accessed the lactating room between 08/03/2014 and 08/11/2014. Mrs. Ford also indicated that the Heart & Vascular Institute building (new building has a designated office for lactating mothers).

(b) (6), (b) (7)(C) and previous lactating mother (b) (6), (b) (7)(C) stated that they never were provided information about the request of access to lactating room nor Guidance for Lactating (See Exhibits D-3-a to D-3-d). Moreover, both employees stated that there are several lactating co-workers that lactate in the bathroom of the emergency department as some do not have access to the lactating rooms and others refrain from using the lactating room as it is used as bathroom and it is usually not clean. Both Individuals indicated that they were never told about the lactating room in the 6th floor of the new building (See Exhibits B-1 , B-2).

(2) An employer shall not be required to compensate an employee receiving reasonable break time under paragraph (1) for any work time spent for such purpose.

The employer and (b) (6), (b) (7)(C) stated that nursing mothers do not clock out during the break.

(3) An employer that employs less than 50 employees shall not be subject to the requirements of this subsection, if such requirements would impose an undue hardship by causing the employer significant difficulty or expense when considered in relation to the size, financial resources, nature, or structure of the employer's business.

Not Applicable,. The employer employs more than 50 Employees (See Exhibit C-3-b).

(4) Nothing in this subsection shall preempt a State law that provides greater protections to employees than the protections provided for under this subsection.

No Louisiana law was preempted.

Section 11: No Violation.

Section 12: During Initial Conference Mrs. Ford indicated that one 17 year-old employee is employed in the hospital in clerical work. A proof of age was provided (See exhibit D-6-a).

DISPOSITION

A final conference was held via telephone with Ms. Lulu Ford, Vice President of Human Resources on August 13, 2014. WHI (b) (6), (b) (7)(C) represented the Wage & Hour Division.

The investigative process, coverage, exemptions and the requirements of Sections 6, 7, 11, and 12 of the FLSA were discussed. Section 7(r) was discussed in detail.

WHI (b) (6), (b) (7)(C) informed the employer of her responsibilities under the FLSA Section 7(r) and that the FLSA had been amended by the Patient and Affordable Care Act (PPACA) and required employers to provide reasonable break time for an employee to express breast the milk and that the employer is required to provide a place, other than a bathroom, that is shielded from view and free from intrusion from co-workers and the public, which may be used by an employee.

WHI (b) (6), (b) (7)(C) determined the employer met the requirement of Sec 7(r)1(A) by providing nursing mothers a break when needed for a reasonable amount of time. There is no indication (b) (6), (b) (7)(C) or other lactating mothers could not go on a nursing break when needed (See Exhibits B-1 and B-2).

WHI (b) (6), (b) (7)(C) determined that Employer failed to provide a place, other than a bathroom, for the lactating mothers. WHI addressed specifically lactating mothers in the ER department and explained that they were lactating in the bathrooms of ER Lounge as the designated lactating room (3rd floor) was used as shower, a bathroom and a lactating room. WHI also mentioned to employer that access to lactating room was not given to all lactating mothers. Finally, WHI (b) (6), (b) (7)(C) explained to employer that the office on the 6th floor in HVI Building meets the specifications as a place for lactating but the employer needs to provide lactating mother information about the availability of this room.

Mrs. Ford acknowledged that she understood the requirements and she stated that she was not aware of the exact requirements of the lactating place as specified by the law. WHI (b) (6), (b) (7)(C) referred employer to <http://www.dol.gov/whd/nursingmothers/> web site and Fact Sheet #73 "Break Time for Nursing Mothers under the FLSA". The employer agreed to comply with the FLSNM. Mrs. Ford stated that the current lactation room in the 3rd floor would not be used as lactating room anymore. Instead, 3 lactation rooms, would be designated for lactating mothers as specified by the Fact Sheet 73. Mrs. Ford also stated that a leadership meeting was held on 08/12/2014 and several steps had been taken in order to achieve Systemic compliance. Mrs. Ford explained that a reminder would be sent to all leadership to explain Sec 7(r)1 requirements. Mrs. Ford also mentioned that guidance would be added to the Return to Work process to ensure that all lactating mothers receive this information (See Exhibit D-0)

Notification: (b) (6), (b) (7)(C) was notified of the results of the investigation on 08/23/2014.

Publications: The employer was provided the following publications: Handy Reference Guide, Fact sheets # 21, fact sheets 21, 22, 23, 28 D, 73, 77A, Part 516, 778 and 785.

Recommendation: Recommend the case be concluded (b) (7)(E)

ER Representative:

Mrs. Lulu Ford

Vice President Of Human Resources, Administration

5000 Hennessy Blvd,

Baton Rouge, La 70808

Phone: 225-765-7859

(b) (6), (b) (7)(C)

Wage and Hour Investigator

Date

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1738020 Originating District: Denver CO District Office
Local Filing Number: 2014-174-10736 Investigating District: Denver CO District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 08/15/2014
Assignment Date: 08/15/2014

Employer Information

Trade Name: West Metro Fire Protection District Legal Name: West Metro Fire Protection District
Address: 433 South Allison Parkway EIN: 84-1157947
County: Jefferson
NAICS Code: 09620
Denver, CO 80226 No. Of Employees: 368

Investigation Information

Period Investigated From: 01/05/2014 BNPI:
To: 08/28/2014 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

3(s)(1)(c) cov - public agency. Sec 6,11,12: not inv. due to lim. nature of inv. Sec 7. No ap. viol. (b) (7)(E) there was insufficient time to express milk due to frequency of emer. calls, but the ER provided evidence showing that (b) (7)(E) was frequently not on emer. calls. (b) (6) baby turned 1 prior to FC. See narrative for further details. FC via phone 10/6/14 with HR Director Shannon Rush. ER ATC and monitor situation w/ (b) (6) next baby (b) (6), (b) (7)(C) not. by ph. 10/6/14 -told to notify WHD if future problem.

WHI Signature: _____ Date: 10/06/2014

Reviewed By: _____ Date: _____

FEIN:	84-1157947		
Investigated	West Metro Fire Protection District	Contact:	Ms. Shannon Rush, Director of Human Resources
Location:	433 S. Allison Parkway	Phone:	720-539-9548
	Lakewood, CO 80226	Cell Phone:	720-641-5818
		Fax:	303-539-9567
		Email:	srush@westmetrofire.org
Send future correspondence to:	Ms. Shannon Rush, Director of Human Resources, and Ms. Catherine Tallerico, Attorney, at the addresses listed to the right.	Representative:	Ms. Catherine Tallerico, Attorney
		Location:	Lyons Gaddis Kahn Hall Jeffers Dworak & Grant, PC P.O. Box 978 Longmont, CO 80502
		Phone:	303-776-9900
		Email:	ctallerico@lgklaw.com

Coverage

West Metro Fire Protection District (“West Metro”) is a special district with quasi-political jurisdiction specializing in fire protection. The district covers 250,000 residents and 110 square miles, including parts of Douglas County, Jefferson County, Denver, and Littleton (all of which are located in Colorado) (*see exhibits C-1 and C-9*). At the time of the initial conference, West Metro employed 320 firefighters and 48 civilians (*see exhibits C-1 and C-11*). Citizens elect the West Metro board of directors, which in turn appoints the fire chief (*see exhibit C-2*). The board of directors consists of the following individuals:

President Pam Feely
Vice-President Kristen Moeder
Secretary Wendy Volmer
Treasurer Cassie Stenstrom
Director Mike Munden
Director Marta Murray
Director Tony Gonzalez
(*See exhibits C-2*)

The organization qualifies as a public agency because it is administered by individuals who are responsible to elected officials and responsible to the general electorate. The entity also has taxing authority. Thus, all employees

are covered by the Fair Labor Standards Act ("FLSA") under §203(s)(1)(c) (*see exhibit C-1*) for the period of investigation 1/5/14 to 8/28/14. The period of investigation is shorter than the standard two (2) years because the investigation was limited to the period when (b) (6), (b) (7)(C) was a nursing mother.

West Metro operates 15 fire stations throughout the district. All fire stations are defined as one enterprise due to common control (the board of directors) and a common business purpose (fire protection in a particular geographic area). The entity is not registered with the Colorado Secretary of State because it is a government entity.

WHI (b) (6) provided the Handy Reference Guide ("HRG") to Director of Human Resources Shannon Rush on 8/28/14. There are no FLSA §16(b) actions currently pending against the employer.

Section 3(d) Employer:

The employers as defined by §3(d) of the FLSA are all members of the board of directors and the fire chief. The board of directors creates all business policy and the fire chief makes the day to day business decisions (*see exhibit C-1*).

MODO:

The case was associated with the MODO (Denver District Office) on 10/6/14. (b) (7)(E)

Exemptions

Due to the limited nature of the investigation, the Wage Hour Division (WHD) only explored exemptions potentially applicable to (b) (6), (b) (7)(C) which would affect (b) (6), (b) (7)(C) rights as a nursing mother under FLSA §7(r).

- I. FLSA §213(b)(20) is inapplicable because West Metro employs (b) (4) employees in fire protection on a weekly basis.

Status of Compliance

The limited FLSA Nursing Mothers investigation was initiated by (b) (7)(E) (b) (6), (b) (7)(C) (b) (7)(E) (b) (6), (b) (7)(C) had insufficient time to express breast milk because (b) (6), (b) (7)(C) was so frequently on emergency calls. (b) (7)(E)

(b) (6), (b) (7)(C) also (b) (7)(E) the employer discriminated against (b) (6), (b) (7)(C) for taking protected leave under the Family Medical Leave Act ("FMLA"). (b) (6), (b) (7)(C) stated that the employer was docking (b) (6), (b) (7)(C) 16 hours of sick leave per week if (b) (6), (b) (7)(C) took more than 10 weeks of modified duty (40 hour weeks in an office as opposed to 48 hour weeks

at the fire stations) prior to taking FMLA leave for the birth of a child. (b) (6), (b) (7)(C), (b) (7)(E) most other employees did not have to forfeit sick leave while on modified duty, and the employer was doing so in retaliation for taking FMLA leave (*see exhibit B-1*). During (b) (7)(E), the Wage Hour Technician (WHT) advised (b) (6), (b) (7)(C) that there was likely no violation under FMLA. WHI (b) (6), (b) (7)(C) confirmed the no violation finding; the employer provided a copy of the union contract stating that all employees must forfeit 16 hours of sick leave per week after 10 weeks of modified duty (*see exhibit C-18*). WHD did not conduct a concurrent FMLA investigation.

Violations Summary:

There were no apparent violations.

Prior History:

There is no prior history

Section 6:

Not explored due to limited nature of investigation.

Section 7:

No apparent violation.

Eligibility: (b) (6), (b) (7)(C) and therefore was eligible for the protections afforded by FLSA§207(r) until 9/29/14 (*see exhibit B-1*).

Allegation: (b) (6), (b) (7)(C), (b) (7)(E) (b) (6), (b) (7)(C) was not being given sufficient time to pump when (b) (6), (b) (7)(C) was working on a busy fire engine. (b) (6), (b) (7)(C), (b) (7)(E) (b) (6), (b) (7)(C) needed to pump about every 4 hours and sometimes had to wait up to 8 hours in a shift without pumping (*see exhibit B-1*).

(b) (6), (b) (7)(C) **Desired Resolution:** During (b) (6), (b) (7)(C) period of eligibility, (b) (6), (b) (7)(C) wanted to either be permanently assigned to a slow station or permanently assigned to an ambulance (as opposed to a fire engine) so that (b) (6), (b) (7)(C) was required to make hospital stops and could take pumping breaks at the hospital (*see exhibit B-1*).

Employer Response: The employer alleged to have worked with (b) (6), (b) (7)(C) as much as possible to accommodate (b) (6), (b) (7)(C). The employer transferred (b) (6), (b) (7)(C) to a slower station (*see exhibit B-2*). However, the employer could not guarantee that (b) (6), (b) (7)(C) would not be “roved,” meaning transferred to a busier station for a short duration due to staffing needs (*see exhibit B-2*). Roving is based on expertise and seniority. (b) (6), (b) (7)(C) is a paramedic, which is a specialty which is frequently in demand. (b) (6), (b) (7)(C) is also relatively low in terms of seniority.

Therefore, (b) (6), (b) (7)(C) sometimes did work at busier stations although (b) (6), (b) (7)(C) was technically assigned to a slower station. Additionally, (b) (6), (b) (7)(C) made an error which resulted in disciplinary action and (b) (6), (b) (7)(C) had to retake some training within the period of investigation (*see exhibits B-2 and C-10*). The training was necessarily completed at a busier station. Although (b) (6), (b) (7)(C) sometimes worked at busier stations, the employer alleged that (b) (6), (b) (7)(C) always had sufficient time to pump. The employer stated that (b) (6), (b) (7)(C) always had sufficient down time at the station, where (b) (6), (b) (7)(C) had a private room for sleeping and pumping (*see exhibit B-2 and C-6*).

Supporting Documentation: Records support the employer's allegation. The employer pulled (b) (6), (b) (7)(C) time stamps which record the time dispatched, the time on scene, and the time back "in service" (meaning waiting for the next call). The records demonstrate that (b) (6), (b) (7)(C) was on calls for an average of 2.86 hours per 24 hour shift (*see exhibits C-3 and C-4*). Each call took an average of 0.59 hours and there was an average of 1.79 hours between each call (*see exhibit C-5*). The longest call for (b) (6), (b) (7)(C) within the period of investigation was 2.66 hours long. On 5 occasions within the period of investigation, (b) (6), (b) (7)(C) took 3 or more calls in a row with less than 30 minutes of down time between each call. In these occasions, WHD calculated the total time between being dispatched on the first call and being put on service for the last call. On these 5 occasions, (b) (6), (b) (7)(C) was unavailable to pump for an average of 3.14 hours each time, with a maximum of 4.41 hours (*see exhibit C-5*).

(b) (6), (b) (7)(C) Response to Employer Response: (b) (6), (b) (7)(C) stated that the rest time visible on the records was not actually rest time because (b) (6), (b) (7)(C) needed to complete chores and training. Additionally, (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) was not permitted to pump on a schedule which was causing health issues (*see exhibit B-1*).

Employer Response to Complainant Response: Training and chores may be done at any point and therefore do not represent a restriction on pumping breaks. Additionally, training was sporadic and did not demonstrate a significant time commitment (*see exhibit B-2*).

Conclusion: Due to the abundance of rest time per shift and employer assurances that chores and training may be completed at any point throughout the shift, WHD did not cite a violation.

Section 11:

Not explored due to limited nature of investigation.

Section 12:

Not explored due to limited nature of investigation.

Disposition

Director of Human Resources Shannon Rush and WHI (b) (6), (b) (7)(C) held a final conference via telephone on

10/6/14. The participants discussed coverage and future compliance regarding the Nursing Mothers provision of the FLSA.

WHI (b) (6), (b) (7)(C) explained that WHD did not cite a violation under the Nursing Mothers provision of the FLSA, but did have concerns moving forward. Although (b) (6), (b) (7)(C) period of eligibility ended in September 2014, (b) (6), (b) (7)(C) was due to have another baby (b) (6), (b) (7)(C) and therefore a similar situation would arise. WHI (b) (6), (b) (7)(C) advised the employer that (b) (6), (b) (7)(C) felt strongly about pumping on a schedule, but WHD could not require it. WHI (b) (6), (b) (7)(C) also emphasized that flexibility on the part of both the employer and (b) (6), (b) (7)(C) would be integral for minimizing conflict in the future and thus avoiding the involvement of federal agencies such as WHD and the Equal Employment Opportunity Commission (which conducted a concurrent investigation). Ms. Rush stated that West Metro planned to assign (b) (6), (b) (7)(C) to a slower station when (b) (6), (b) (7)(C) returned from maternity leave, barring any additional disciplinary actions and subsequent re-assignment to a busy station for re-training. Ms. Rush also agreed that flexibility from both parties was essential.

WHI (b) (6), (b) (7)(C) also informed the employer that subsequent FLSA investigations may involve civil money penalties.

WHD notified (b) (6), (b) (7)(C) by phone on 10/6/14. WHI (b) (6), (b) (7)(C) instructed (b) (6), (b) (7)(C) to notify WHD if any issues arose in the period of eligibility beginning in December 2014.

Recommendation:

WHI recommends administrative closure (b) (7)(E)

Pubs:	HRG WHD Fact Sheet 73			
			(b) (6), (b) (7)(C), Investigator	
			October 6, 2014	

WHISARD Compliance Action Report

U.S. Department of Labor Wage and Hour Division

Case ID: 1754083 Originating District: Houston TX District Office
Local Filing Number: 2015-199-12277 Investigating District: Houston TX District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 03/02/2015
Assignment Date: 03/02/2015

Employer Information

Trade Name: Allied Group Legal Name: Allied Fitting, LP
Address: 7200 Mykawa EIN: 74-1501578
County: Harris
NAICS Code: 213112
Houston, TX 77033 No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 04/13/2013 BNPI:
To: 04/12/2015 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Full Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: 05/28/2015
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSA Totals:	13	13	\$73,874.54	\$73,874.54	\$0.00	\$0.00	
Total Violations Under FLSA:	14						\$0.00

WHISARD Compliance Action Report

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FMLA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FMLA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	
Total Violations Under FMLA:		392					\$0.00

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	13	Unduplicated Employees Agreed:	13
Total Amount BWs Computed:	\$73,874.54	Total Amount BWs Agreed:	\$73,874.54
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

43.25 hrs, Cov: 3(s)(1)(A), er >50 ees, SOC: (b) (7)(E) Sec 7 OT viols and FLSANM viols and FMLA viols, (b) (7)(E) for FMLA and FLSANM, enforced the Sec 7 OT viols and viol found in FMLA policy review, Sec 7 OT viols found due for 13 ees totaling \$73,874.54 because of misclassified 541 ees, er ATC and ATP, er ATR FMLA policy viol, POP due to CLEO by 6/4/2015, No CMPs rec, Rec case be closed with no further action (b) (7)(E)

WHI Signature: _____ Date: 05/12/2015

Reviewed By: _____ Date: _____

FLSA NARRATIVE

2015-199-12277

Allied Fitting, LP
Dba Allied Group
7200 Mykawa
Houston, Texas 77033
Phone: 713-799-1100
Fax: 713-847-6864

Contact: Christopher Bacon, attorney
Vinson & Elkins
1001 Fannin St, Ste 2500
Houston, Texas 77002
Ph: 713-758-1148
Fax: 713-615-5014
cbacon@velaw.com

EIN: 74-1501578

COVERAGE

Subject firm acts as a distribution center for pipe valves and fittings used in the oil and gas industry. Subject enterprise is currently a Limited Partnership but was established as a corporation in Texas in 1965. Enterprise was formed as a Limited Partnership on December 29, 1999 (**see exhibit C-4**). Marc Herzstein holds partnership in the company and acts as President (**see exhibit C-3**). Mr. Ricardo Ibarra acts as Secretary of the enterprise. The point of contact throughout the investigation period was attorney, Christopher Bacon (**see exhibit C-2**).

Subject enterprise consists of nine locations nationwide and multiple locations worldwide. Subject enterprise is a covered enterprise under 3(s)(1)(A) of the Fair Labor Standards Act as it has grossed more than \$500,000 in each of the last three years (**see exhibits C-1b and C-5**). In addition, firm's employees handle goods that have moved in interstate commerce such as materials that are shipped from other countries (**see exhibit B-1**). The enterprise's annual dollar volume is provided below. The company has not yet compiled its annual dollar volume numbers for 2014 but it was confirmed by the company that it grossed more than \$500,000 for the year 2014.

2012: (b) (4)

2013: (b) (4)

(see exhibit C-5)

3(d) employer: Marc Herzstein is considered a 3(d) employer as he holds ownership in the company. Daniel Doubenmier, Quality Assurance Supervisor, (b) (6), (b) (7)(C), Director of Procurement, (b) (6), (b) (7)(C), Accounts Receivable Supervisor, (b) (6), (b) (7)(C), Director of Quality, (b) (6), (b) (7)(C), Secretary, (b) (6), (b) (7)(C), Procurement Supervisor, John Rodeno, Executive, (b) (6), (b) (7)(C), Transportation Manager, (b) (6), (b) (7)(C), Director of Customer Service and David Washko, President of Sales are all considered 3(d) employers under the Fair Labor Standards Act as they have the authority to make decisions on employment practices, they can hire, fire, set schedules and evaluate employees (see exhibits B-1 through B-8).

Investigative History: A search in WHISARD reveals that employer has no prior history.

Period and type of investigation: A full investigation was conducted for April 13, 2013 until April 12, 2015. The investigation reviewed the enterprise's compliance with the FLSA Nursing Mothers provisions, Sections 6, 7, 11 and 12 of the Fair Labor Standards Act and the Family Medical Leave Act. See FMLA narrative.

MODO: Houston, Texas District Office is the MODO and contact was made on March 27, 2015.
(b) (7)(E)

EXEMPTIONS

Applicable

13(a)(1), 541.100 is applicable to Marc Herzstein as he owns more than (b) (4) of the company.

13(a)(1), 541.100 is applicable to (b) (6), (b) (7)(C), Quality Assurance Supervisor, (b) (6), (b) (7)(C), Director of Procurement, (b) (6), (b) (7)(C), Accounts Receivable Supervisor, (b) (6), (b) (7)(C), Director of

Quality, (b) (6), (b) (7)(C), Secretary, (b) (6), (b) (7)(C), Procurement Supervisor, John Rodeno, Executive, (b) (6), (b) (7)(C), Transportation Manager, (b) (6), (b) (7)(C), Director of Customer Service and David Washko, President of Sales. Each employee is paid a guaranteed salary of more than \$455 per week and each has the power to hire and fire at least two full-time employees and their primary duty is management (see exhibits B-1 through B-8).

13(a)(1), 541.100 is applicable to (b) (6), (b) (7)(C), Technical Services Engineer as (b) (6) is compensated a guaranteed salary of at least \$455 per week, and (b) (6) primary duty is the performance of work requiring knowledge of an advanced type in a field of science customarily acquired by a prolonged course of specialized intellectual instruction (see exhibit B-3).

Not Applicable

541.200, Administrative Exemption, is not applicable to (b) (6), (b) (7)(C), Procurement Admin, (b) (6), (b) (7)(C) Receptionist, (b) (6), (b) (7)(C), Accounts Payable Clerk, (b) (6), (b) (7)(C), Procurement Admin, (b) (6), (b) (7)(C), Treasury Specialist, (b) (6), (b) (7)(C), After Sales, (b) (6), (b) (7)(C), Accounts Receivable, (b) (6), (b) (7)(C), Inbound Front Admin, (b) (6), (b) (7)(C), Accounts Payable Clerk, (b) (6), (b) (7)(C), Accounts Receivable, (b) (6), (b) (7)(C), Accounts Payable Clerk and (b) (6), (b) (7)(C) Inventory Admin. Each employee was compensated a guaranteed salary that exceeded the required \$455 per week, but none of the employees met the duties test. The above-mentioned employees process paperwork and do not use their discretion or independent judgement to make decisions for the company (see exhibits B-1 through B-2 and B-4 through B-8).

STATUS OF COMPLIANCE

(b) (6), (b) (7)(C) Case Assignment Information: The investigation was initiated by (b) (6), (b) (7)(C) (b) (7)(E) the company did not provide a lactation room for (b) (6), (b) (7)(C) when (b) (6), (b) (7)(C) returned to work after (b) (6), (b) (7)(C) baby was born. The lactation room was provided immediately after the appointment letter was sent to the company and before the initial conference and therefore, (b) (6), (b) (7)(C) did not wish to use (b) (6), (b) (7)(C) name to discuss (b) (6), (b) (7)(C) with the company because (b) (6), (b) (7)(C) then, had full use of the newly-created lactation room.

(b) (7)(E) (b) (6), (b) (7)(C) also (b) (7)(E) (b) (6), (b) (7)(C) was misclassified as an exempt employee and did not meet the duties test of any of the Section 541 exemptions. (b) (7)(E) (b) (6), (b) (7)(C) FMLA (b) (7)(E) are discussed in the FMLA narrative. (b) (6), (b) (7)(C) was found due \$6,964.83 in overtime back wages. (b) (6), (b) (7)(C) was notified of the case findings via phone on May 12, 2015.

Section 6: No minimum wage violations disclosed.

Section 7: Overtime violations were disclosed.

Overtime violations were disclosed as thirteen current employees were found to be misclassified as Section 541 exempt employees as their job duties did not meet the duties test of any Section 541 exemption (see exhibits B-1 through B-2 and B-4 through B-8). The company reviewed the records for any former employees who might have been misclassified, but their periods of employment were outside of the period of investigation.

No time records were maintained for the misclassified employees and therefore hours were reconstructed to determine how many overtime hours they worked during the investigation period. The affected employees worked with the employer and the employer's attorney to reconstruct their hours worked and those hours were provided to the Department of Labor. Employee interviews were conducted to review the reconstructed hours. One employee came forward to allege that the hours that were reconstructed did not include some additional overtime that she worked. Employee gave written permission to use her name when discussing the changes that needed to be made to the reconstructed hours (see exhibits B-2 and D-3). **Overtime back wages were found due for 13 employees totaling \$73,874.54.**

Method of Computation

Rates of pay were determined from employer-provided payroll and hours worked were reconstructed using the number of overtime hours the employees told their employer that they worked in the last two years. The attorney and the employer stated that the employees' weekly salaries covered 40 hours of work and therefore, according to 29 CFR 778.113, time and a half of the employees' regular rates was computed for the overtime hours.

(b) (7)(E)

(see exhibit A-1)

(b) (6), (b) (7)(C) (b) (7)(E) the employer was not in compliance with Section 7(r)(1)(B) because they did not provide a lactation room after (b) (6), (b) (7)(C) returned to work after the birth of (b) (6), (b) (7)(C) baby. The employer provided the lactation room after they received the Department of Labor appointment letter and before the initial conference was held. Therefore, because the lactation room was provided, (b) (6), (b) (7)(C) decided that (b) (7)(E) the lactation room was not provided before the Department of Labor investigation was initiated.

Section 11: Recordkeeping violations were disclosed.

Recordkeeping violations disclosed as the employer did not maintain records for the employees who were misclassified as Section 541 exempt.

Section 12: No Child Labor violations disclosed.

No minors were employed during the investigation period.

DISPOSITION

A final conference was held on Thursday, May 7, 2015 at 7200 Mykawa Road, Houston, Texas 77033. Those in attendance were Chris Bacon, attorney, Cindy Skibin, Human Resources, Artenia Pineda, Human Resources and WHI (b) (6), (b) (7)(C).

WHI (b) (6), (b) (7)(C) explained coverage as it pertained to the firm and explained that the investigation period covered two years.

WHI (b) (6), (b) (7)(C) reviewed exemptions and provided the Section 541 publication to those in attendance. WHI (b) (6), (b) (7)(C) paid special attention to the duties test of the Administrative exemption. WHI (b) (6), (b) (7)(C) stated that there were 13 employees who were identified as misclassified exempt employees;

those employees should be classified as non-exempt. **Chris Bacon stated that the company did not know that these employees were actually non-exempt and that they have been since reclassified as non-exempt employees.**

WHI (b) (6), (b) (7)(C) stated that the misclassification did not result in a minimum wage violation but reminded those in attendance that all covered non-exempt employees must be paid the applicable minimum wage for every hour worked.

WHI (b) (6), (b) (7)(C) stated that overtime violations were disclosed for the employees who were misclassified as exempt employees. WHI (b) (6), (b) (7)(C) stated that all covered non-exempt employees must be paid the premium pay for hours over 40 worked in the workweek.

WHI (b) (6), (b) (7)(C) provided the Fair Labor Standards Act and discussed Section 7(r)(1)(B) with those in attendance, reviewing the requirements of the nursing mothers provisions of the Act. WHI (b) (6), (b) (7)(C) stated that no violations were disclosed because a lactation room was provided and reasonable break time was provided for the non-exempt employees who are currently nursing mothers.

WHI (b) (6), (b) (7)(C) provided the Record keeping publication and stated that there was a record keeping violation disclosed because no time keeping records were kept for the misclassified employees. WHI (b) (6), (b) (7)(C) reminded those in attendance that time records must be kept for two years and payroll for three years.

WHI (b) (6), (b) (7)(C) stated that there were no child labor violations disclosed and reviewed some hazardous occupations that could relate to the firm in the event that they hire minors in the future.

Ms. Pineda stated that the employees who were re-classified as non-exempt employees are now clocking in and out and are paid the premium pay for overtime hours.

Those in attendance agreed to comply with the Fair Labor Standards Act in the future.

WHI (b) (6), (b) (7)(C) stated that back wages were computed to make the wages of the employees whole for the last two years and showed those in attendance the WH-56.

Ms. Pineda agreed to pay \$73,874.54 to 13 employees by May 28, 2015 and signed the WH-56.

The employer was informed of the possibility of civil money penalties and liquidated damages in this or any subsequent investigation by the Wage and Hour Division of The Department of Labor. Employer was advised that written notification regarding assessment of CMPs will be sent at the conclusion of the investigation, if applicable.

Total back wages due are \$73,874.54 to 13 employees. A copy of the WH-56 was provided to Ms. Pineda, Ms. Skibin and Mr. Bacon.

A copy of the signed WH-56 is in the case file. A copy of the Back Wage Disbursement and Pay Evidence Instructions was also provided and WHI (b) (6), (b) (7)(C) explained the proof of payment procedures to Ms. Pineda, Ms. Skibin and Mr. Bacon. Receipt forms (WH-58s) were issued.

Publications provided: FLSA Handy Reference Guide, 541, 778, 516, Fact Sheet 44, Fact Sheet 13, Fact Sheet 73 and DOL website

Recommendations:

(b) (7)(E)

(b) (7)(E)

Recommend that case be closed with no further action (b) (7)(E)

WHI (b) (6), (b) (7)(C)
Wage Hour Investigator
May 12, 2015

FAMILY AND MEDICAL LEAVE ACT NARRATIVE REPORT

Allied Group
Allied Group, LP
7200 Mykawa
Houston, Texas 77033
Phone: 713-799-1100
Fax: 713-847-6864

Contact: Christopher Bacon, attorney
Vinson & Elkins
1001 Fannin St, Ste 2500
Houston, Texas 77002
Ph: 713-758-1148
Fax: 713-615-5104
cbacon@velaw.com

EIN: 74-1501578

REASON FOR INVESTIGATION

This investigation is the result of (b) (7)(E) (b) (6), (b) (7)(C) (b) (7)(E) the company was not in compliance with the Family Medical Leave Act (FMLA) Section 825.215(c) as (b) (6) bonus was reduced in amount because (b) (6) went on FMLA leave (see exhibits D-5a through D-5b). The bonus is a discretionary bonus that is not based on achievement of a specified goal or attendance.

EMPLOYER COVERAGE

Subject firm is a covered employer according to Code of Federal Regulations Part 825.104 as the firm is engaged in commerce and employs more than 50 employees for more than 20 calendar workweeks of the year. This investigation covered the period of April 13, 2013 until April 12, 2105 and also checked the compliance of the Nursing Mothers Provisions of the Fair Labor Standards Act and Sections 6,7,11, and 12 of the Fair Labor Standards Act. See FLSA narrative. A search in WHISARD shows that employer has no prior history.

EMPLOYEE ELIGIBILITY

(b) (6), (b) (7)(C) worked as a full-time employee for Allied Fitting since (b) (6), (b) (7)(C) and worked at least 1250 hours during the twelve-month period immediately preceding the commencement of the leave. (b) (6), (b) (7)(C) worked at a worksite with over 50 other employees, as per 825.111 (a)(2). (b) (6), (b) (7)(C) is an eligible employee according to

Code of Federal Regulations Part 825.110.

QUALIFYING CONDITION

In accordance with Part 825.115, (b) (6), (b) (7)(C) leave was FMLA-qualifying as (b) (6), (b) (7)(C) requested leave to bond with (b) (6), (b) (7)(C) new-born child. (see exhibit B-5).

EE NOTIFICATION

(b) (6), (b) (7)(C) provided notice to (b) (6), (b) (7)(C) in March of 2014 that (b) (6), (b) (7)(C) would be requesting leave and (b) (6), (b) (7)(C) FMLA leave was approved (see exhibit B-5).

STATUS OF COMPLIANCE

(b) (6), (b) (7)(C) took FMLA leave for 12 weeks and came back to work and was given (b) (6), (b) (7)(C) employee evaluation by (b) (6), (b) (7)(C) and the Chief Operations Officer, Philippe Joubert who told (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) bonus would be more this year than last year. When (b) (6), (b) (7)(C) received (b) (6), (b) (7)(C) bonus, it was the same amount as the previous year, and (b) (6), (b) (7)(C) wrote (b) (6), (b) (7)(C) an email that said that it did not increase because (b) (6), (b) (7)(C) was out for 3 months (see exhibit D-5). (b) (6), (b) (7)(C) decided that (b) (6), (b) (7)(C) (b) (7)(E)

The employer's FMLA policy was reviewed and a section of the policy was found to be non-compliant. The employer's leave policy states, "Employees returning from leave shall not be entitled to any seniority or employment benefits that may have been bestowed on their position during their absence." (see exhibit D-6). **This section of the policy was found to be in violation of Section 825.215(c). The employer was asked to amend the policy to come into compliance with Section 825.215(c).**

DISPOSITION

A final conference was held on Thursday, May 7, 2015 at 7200 Mykawa, Houston, Texas 77033. Those in attendance were Ms. Artenia Pineda, Human Resources, Ms. Cindy Skibin, Human Resources, Mr. Chris Bacon, attorney and WHI (b) (6), (b) (7)(C)

WHI (b) (6), (b) (7)(C) began the meeting by discussing Section 825.215(c) with those in attendance and provided a Section 825 publication. WHI (b) (6), (b) (7)(C) stated that a portion of the employer's policy was not in compliance because it was a violation of Section 825.215(c). The equivalent pay obligation under the FMLA pertains to unconditional pay

increases and also to bonuses, unless the bonus is based on a specific goal such as hours worked or products sold. **Mr. Bacon stated that he had not reviewed the employer's FMLA policy and was not aware that the non-compliant section was in the policy. Mr. Bacon said that they have already removed that section from the policy and are reviewing all of their leave policies currently.**

All in attendance agreed to comply with the Family and Medical Leave Act in the future.

(b) (6), (b) (7)(C) was notified of the case findings on May 12, 2015 via phone.

Recommendations

(b) (7)(E)

(b) (7)(E)

I recommend that this case be

concluded with no further action (b) (7)(E)

WHI (b) (6), (b) (7)(C)

Wage and Hour Investigator

May 12, 2015

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1767069 Originating District: Oklahoma City District Office
Local Filing Number: 2015-273-03252 Investigating District: Oklahoma City District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 07/28/2015
Assignment Date: 01/05/2016

Employer Information

Trade Name: IHOP Legal Name: Romulus Restaurant Group
Address: 840 Ed Noble Pkwy EIN: 45-5203095
County: Cleveland
NAICS Code: 722211
Norman, OK73072 No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 03/01/2014 BNPI:
To: 02/29/2016 Reinvestigation: ☒
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Full Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	
Total Violations Under FLSNM:	2						\$0.00

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

54.25 hours; FLNM investigation; 3(s)(1)(A) enterpr cov; FLSNM violation for failing to provide reasonable break time and place to express milk; no other violations found. ER agreed to comply in future; Pubs: HRG, FSs 28D, 44, & 77A, 073; WHs 1088, 1261, 1262, 1281, 1312, 1318 & 1330. ^(b) notified on 3/24/16. (b) (7)(E)

WHI Signature: _____ Date: 03/24/2016

Reviewed By: _____ Date: _____

COVERAGE

Federal Employer Identification Number (FEIN)

The FEIN for this employer (ER) was 45-5203095. (See Exhibit C-1).

Main Office District Office (MODO)

The Phoenix District Office was the MODO. Wage and Hour Investigator (WHI) contacted the MODO and associated the case with the MODO control record. WHI did not receive any instructions from the MODO and handled the subject location locally. (D-1).

Reason for Investigation

This full investigation was initiated as a result of (b) (7)(E), (b) (6), (b) (7)(C) contacted the Department of Labor- Wage and Hour Division (DOL-WHD) to (b) (7)(E), (b) (6), (b) (7)(C) was not given the reasonable break time needed to express breast milk for (b) (6), (b) (7)(C) newborn child. WHI found that (b) (6), (b) (7)(C) was not given reasonable break time and (b) (6), (b) (7)(C) was not provided an adequate space to express (b) (6), (b) (7)(C) breastmilk while employed at the International House of Pancakes (herein IHOP) restaurant. (B-10).

Prior History

The enterprise was previously investigated by the Department of Labor Wage and Hour Division (DOL-WHD). The following is a list of case history for the enterprise including the concurrently investigated location:

CASE ID	ACT	ER Trade Name	Case Status	ER City	ER Legal Name
1056937	CL	IHOP	Concluded	Tempe	Romulus, Inc.
1245703	FLSA	IHOP	Concluded	Phoenix	Romulus, Inc.
1321021	FLSA	IHOP	Concluded	Phoenix	Romulus, Inc.
1370753	CL	IHOP	Concluded	Nogales	Romulus, Inc.
1675725	FLSA	IHOP	Concluded	Dallas	Romulus Group, Inc.
1715986	FLSA	IHOP	Concluded	Pittsburgh	Romulus, Inc.

1716785	FLSA	IHOP	Concluded	Boise	RMLS IHOP IDAHO, LLC.
1736660	CL	IHOP	Concluded	Pittsburgh	Romulus, Inc.
1738842	FLSA	IHOP	Concluded	Oklahoma City	RMLS HOP OKC, LLC
1749220	FLSA	IHOP	Concluded	Pittsburgh	Romulus, Inc.
1764410	FLSA	IHOP	Management Review	Yuma	Romulus Inc,
1767069	FLSNM	IHOP	Under Investigation	Norman	Romulus Restaurant Group
1772839	FLSA	IHOP	Concluded	Mustang	RMLS HOP OKC, LLC

(C-31).

Period of Investigation

The period of investigation was March 1, 2014 to February 29, 2016. (C-1).

Annual Dollar Volume (ADV)

Per the ER's written records, the ADV for the subject location was as follows: 2013- (b) (4), 2014- (b) (4) and for 2015- (b) (4). The ER's attorney, Heidi Nunn-Gilman, refused to provide any further information regarding the enterprise ADV. (C-2 to C-4).

Nature of Business

The subject location was an International House of Pancakes (herein IHOP) restaurant. The enterprise, Romulus Restaurant Group, Inc. specialized in the management of 78 IHOP restaurants throughout nine states. (C-1 to C-31).

Business Structure

The enterprise, Romulus Restaurant Group, Inc. specialized in the management of 78 IHOP restaurants throughout nine states. The enterprise incorporated each location separately and claimed each location was a "manager-managed limited liability company." The subject location, which Romulus Restaurant Group, Inc. incorporated as RMLS HOP OKC, LLC, also does business as IHOP 1485 and will herein be referred to as IHOP. The Attorney for the enterprise, Ms. Nunn-Gilman, claimed (b) (6), (b) (7)(C) (C-1 to C-31).

Branch Establishments

The enterprise, Romulus Restaurant Group, Inc. specialized in the management of 78 IHOP restaurants throughout nine states. The Attorney for the enterprise, Ms. Nunn-Gilman, only provided the Oklahoma locations and the corporate address in Phoenix, Arizona; Ms. Nunn-Gilman refused to provide the addresses and locations of the other 71 IHOP restaurants. The corporate office was located at, 4131 N. 36th Street, Phoenix, Arizona 85018. (C-1 to C-31).

Workforce

The Attorney for the enterprise, Ms. Nunn-Gilman refused to provide the total employees (EEs) managed under

Romulus Restaurant Group, Inc. The subject location had an estimated 50 EEs. At the initial conference however, the Director of Operations, Nick Perry stated that he believed Romulus Restaurant Group, Inc. employed around (b) (4) total EEs. (C-1 to C-31).

Litigation

The Attorney for the enterprise, Ms. Nunn-Gilman stated that the enterprise did not have any pending litigation with regards to the Fair Labor Standards Act (FLSA) §16(b) actions. (C-1 to C-31).

Government Contracts

The Attorney for the enterprise, Ms. Nunn-Gilman stated that the enterprise did not have any Davis-Bacon Act, Davis-Bacon Related Acts or Service Contract Act contracts. (C-1 to C-31).

Joint Employment

Joint employment with any other enterprise did not exist. (C-1 to C-31).

Employment Relationship and Independent Contractors

WHI did not find any EEs misclassified as Independent Contractors. WHI looked at the seven factors given by the Supreme Court in the determination of the EE and ER relationship between the ER and Tye Restaurant Service, LLC (herein Tye Restaurant Service) and Billy R. Beer DBA BClean (herein BClean). Both Independent Contractors owned their own business with their own Federal Tax Identification Number (FEIN). (C-5).

Integral Part of the ER's Business

First, the work performed by Tye Restaurant Service and BClean were not integral parts of IHOP's business. IHOP was a restaurant that provided food and beverages to customers 24 hours a day. Tye Restaurant Service and BClean were both businesses that provided specialized cleaning of kitchen equipment and other large appliances used by commercial kitchens. The services provided by Tye Restaurant Service and BClean were not integral to the restaurant business. (C-5).

Permanency

Second, Tye Restaurant Service and BClean only worked for IHOP for 2015. IHOP did not utilize either business' services in the previous years as IHOP only needed the services of Tye Restaurant Service and BClean once every few years. (C-5).

Investment

Third, both owners of Tye Restaurant Service and BClean provided their own tools and equipment. IHOP provided access to the kitchen equipment that need to be cleaned. But Tye Restaurant Service and BClean

brought their own cleaning materials and tools when work was performed at IHOP. (C-5).

Control

Fourth, the work of Tye Restaurant Service and BClean was controlled by IHOP only when Tye Restaurant Service and BClean were performing work at IHOP. Both Tye Restaurant Service and BClean had independent businesses to run and had other customers which utilized their services. (C-5).

Profit and Loss

Fifth, Tye Restaurant Service and BClean were employed by multiple companies and not only by IHOP. Tye Restaurant Service and BClean were paid a set amount for their services (versus an hourly amount). Essentially, both Tye Restaurant Service and BClean had complete control over the amount of profit and loss earned. (C-5).

Competition

Sixth, WHI found that BClean advertised on the internet. Although WHI could not find advertising for Tye Restaurant Service, WHI did find where the owner of Tye Restaurant Service had established a legal name that was registered with the State of Oklahoma. Both Tye Restaurant Service and BClean worked for multiple different companies other than IHOP. Additionally, both Tye Restaurant Service and BClean held themselves out as Independent Contractors and business owners. (C-5).

Degree of Independent Business Organization

Finally, Tye Restaurant Service and BClean both held themselves out as Independent Contractors and consider themselves business owners. Tye Restaurant Service and BClean paid taxes to the Internal Revenue Service (IRS) out of the 1099 form paid to them by IHOP and by their many other customers. (C-5).

Looking at all of the factors, WHI found that Tye Restaurant Service and BClean were not misclassified as Independent Contractors. (C-5).

Interstate Commerce

The enterprise is covered under FLSA §3(s)(1)(A). The ADV for the enterprise was over \$500,000 per year, there were more than two EEs, and all EEs handled goods produced and moved in commerce. The EEs used and handled goods shipped from other states including, Post-It Notes© from Kentucky. (C-1).

Section 3(d) Employer (ER)

(b) (6), (b) (7)(C) (the General Manager) and (b) (6), (b) (7)(C) (the local Area Manager) met the definition of a 3(d) ER. (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) were involved in the daily operations of the enterprise; (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) had the ability to hire and fire EEs, gave instructions to EEs and acted in the interest of the enterprise. (C-1).

EXEMPTIONS

Applicable

FLSA §13(a)(1)

29 CFR §541.100

The ER claimed exemptions for the General Manager, (b) (6), (b) (7)(C) and the Assistant General Manager, (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) were paid a salary of at least \$455 per week and managed all of the EEs at the restaurant. (b) (6), (b) (7)(C) had the ability to hire, fire and discipline EEs; (b) (6), (b) (7)(C) scheduled and trained all of the EEs at the restaurant. Thus, WHI found the exemptions applicable during the period of investigation. (B-1, C-1 and 29 CFR §541.100).

The only exemptions claimed at the investigated location were (b) (6), (b) (7)(C); WHI did not investigate the exemptions claimed at the corporate level. No other exemptions were found applicable. (C-1).

STATUS OF COMPLIANCE

Period of Investigation

The period of investigation was March 1, 2014 to February 29, 2016. (C-1).

Reason for Investigation

This full investigation was initiated as a result of (b) (7)(E), (b) (6), (b) (7)(C) (b) (7)(E) (b) (6), (b) (7)(C) was not given the reasonable break time needed to express breast milk for (b) (6), (b) (7)(C) newborn child. WHI found that (b) (6), (b) (7)(C) was not given reasonable break time and (b) (6), (b) (7)(C) was not provided an adequate space to express (b) (6), (b) (7)(C) breastmilk while employed at the International House of Pancakes (herein IHOP) restaurant. (B-10).

(b) (6), (b) (7)(C) Information

(b) (6), (b) (7)(C) was employed at the IHOP location from 5/4/2015 through (b) (6), (b) (7)(C) termination date in (b) (6), (b) (7)(C) was hired as a Server and paid (b) (6), (b) (7)(C) per hour plus tips. (B-10).

(b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) was not allowed to take (b) (6), (b) (7)(C) repeated requests to have reasonable break time to express (b) (6), (b) (7)(C) breastmilk. Additionally, (b) (6), (b) (7)(C) stated that on the few occasions when (b) (6), (b) (7)(C) was given time to express (b) (6), (b) (7)(C) milk, (b) (6), (b) (7)(C) was forced to pump in (b) (6), (b) (7)(C) own personal vehicle as the ER did not provide a reasonable and private location (other than the restroom). (B-1).

§7(r)- Break Time for Nursing Mothers

The Patient Protection and Affordable Care Act amended section seven of the FLSA to require ERs to provide nursing mothers with a reasonable break time to express breast milk and a place, other than a bathroom, that may be used to express milk. The ERs must be covered by FLSA enterprise coverage or the EE must be individually covered. Additionally, the break time is only afforded to non-exempt EEs. Finally, the ER may claim an undue hardship exemption if the ER employs less than 50 EEs. The number of EEs is determined by counting EEs at all worksites, regardless of location or part-time status. (FLSA §7(r)).

The requirements under §7(r) of the FLSA:

- (1) An ER shall provide—
 - (A) A reasonable break time for an EE to express breast milk for her nursing child for one year after the child's birth each time such EE has need to express the milk; and
 - (B) A place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an EE to express breast milk.
- (2) An ER shall not be required to compensate an EE receiving reasonable break time under paragraph (1) for any work time spent for such purpose.
- (3) An ER that employs less than 50 EEs shall not be subject to the requirements of this subsection, if such requirements would impose an undue hardship by causing the ER significant difficulty or expense when considered in relation to the size, financial resources, nature, or structure of the ER's business.
- (4) Nothing in this subsection shall preempt a State law that provides greater protections to EEs than the protections provided for under this subsection.

Under the FLSA §7(r)(1)(A), the ER failed to provide (b) (6), (b) (7)(C) (an hourly, nonexempt EE) with reasonable break times to express breast milk for (b) (6), (b) (7)(C) nursing child. (b) (6), (b) (7)(C) stated that when (b) (6), (b) (7)(C) requested time to pump (b) (6), (b) (7)(C) breastmilk, the GM, (b) (6), (b) (7)(C) would tell (b) (6), (b) (7)(C) “not right now,” or “later.” (b) (6), (b) (7)(C) developed mastitis. According to WebMD, mastitis may develop when a nursing mother goes, *for long stretches between nursing or failing to empty the breast completely*. (b) (6), (b) (7)(C) eventually terminated her own employment at IHOP. (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) stated (b) (6), (b) (7)(C) quit not because of the nursing mother issues, but because (b) (6), (b) (7)(C) did not get along with the GM, (b) (6), (b) (7)(C). (B-10).

Under the FLSA §7(r)(1)(B), the ER failed to provide (b) (6), (b) (7)(C) (an hourly, nonexempt EE) with a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an EE to express breast milk. (b) (6), (b) (7)(C) stated that on the occasions when (b) (6), (b) (7)(C) allowed (b) (6), (b) (7)(C) to express (b) (6), (b) (7)(C) milk, (b) (6), (b) (7)(C) had to go to (b) (6), (b) (7)(C) own vehicle to do so. (B-10).

(b) (6), (b) (7)(C) also stated that (b) (6), (b) (7)(C) did not want (b) (6), (b) (7)(C) job back at IHOP, nor did (b) (6), (b) (7)(C) expect any back payment. (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) wanted (b) (6), (b) (7)(C) to “change (b) (6), (b) (7)(C) ways,” so that other nursing mothers did not experience the same things as (b) (6), (b) (7)(C) did when (b) (6), (b) (7)(C) was employed there. (B-10).

During WHI's initial conference, WHI found that the ER had come into compliance and had made the Manager's office available for nursing mothers. The ER had added a curtain to cover the window to allow for privacy of the nursing mother. (C-1).

§6- Minimum Wage (MW)

No violations found. The ER paid \$7.25 for all hours worked; if the tipped EE made less than MW with their (b) (6), (b) (7)(C) hourly wage plus their tips, the ER brought the EEs up to MW. (D-19 to D-121).

§7- Overtime Pay (OT)

No violations found. The ER paid time and one-half (T ½) all non-exempt EEs' regular rates when they worked over 40 hours in a workweek. (D-19 to D-121).

§11-Recordkeeping (RK)

No violations found. The ER had all posters posted. (C-1).

§12- Child Labor (CL)

No violations found. (C-1).

DISPOSITION

On March 1st, 2016, via a telephonic conference call, WHI met with the ER's attorney, Heidi Nunn-Gilman, Nick Perry (Director of Operations), and Denyse Lujan (Human Relations Director for Romulus), who represented

Romulus Restaurant Group, Inc. WHI (b) (6), (b) (7)(C) represented the DOL-WHD. WHI (b) (6), (b) (7)(C) began with an explanation of coverage under the Fair Labor Standards Act of 1938, as amended; the investigative period; the process regarding the investigation, and the outcome of the investigation.

§7(r)- Break Time for Nursing Mothers

WHI discussed in detail what the nursing mothers violations. Ms. Nunn-Gilman to comply with all nursing mothers requirements in the future.

§6- Minimum Wage

WHI discussed in detail what constituted a MW violation. Ms. Nunn-Gilman agreed to continue to comply with MW in the future.

§7- Overtime Pay

WHI discussed in detail what constituted an OT violation. Ms. Nunn-Gilman agreed to continue to comply with OT in the future.

§11-Recordkeeping

Ms. Nunn-Gilman agreed to continue to comply with all recordkeeping requirements in the future.

§12- Child Labor

Ms. Nunn-Gilman agreed to continue to comply in the future with all applicable CL provisions.

Civil Money Penalties (CMPs)

WHI advised the ER's attorney that failure to comply in the future could result in CMPs. Additionally, WHI informed the ER that CMPs were always a possibility. Ms. Nunn-Gilman stated that she understood.

Complainant Notification

WHI left a voicemail message for (b) (6), (b) (7)(C) on 3/24/2016 and informed (b) (6) of the findings.

(b) (7)(E)

Publications Provided

WHI sent the ER or the ER's attorney the following publications on or before 3/29/2016:

IHOP Case ID: 1767069

FS 044

Wage & Hour Visits to Employers Fact Sheet

FS 073

Nursing Mothers Fact Sheet

WH 1261

FLSA Recordkeeping Regs (29 CFR 516)

WH 1262

Overtime Compensation Regs (29 CFR 778)

WH 1281

FLSA Exec, Admin, Professional or Outside Sales Regs (29 CFR 541)

WH 1282

FLSA Handy Reference Guide (English)

WH 1312

FLSA Hours Worked Regs (29 CFR 785)

WH 1318

FLSA Fair Labor Standards Act

WH 1325

Overtime Compensation Pamphlet

WH 1330

Child Labor Non-Agriculture Requirements

WH 1418

FMLA Family and Medical Leave Act

Future Contact:

Heidi Nunn-Gilman, Attorney
1850 North Central Ave. STE 2400
Phoenix, AZ 85004
602-322-4080

IHOP Case ID: 1767069

WHI (b) (6), (b) (7)(C) 3/24/2016

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1774278 Originating District: Oklahoma City District Office
Local Filing Number: 2016-273-03417 Investigating District: Oklahoma City District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 10/20/2015
Assignment Date: 10/20/2015

Employer Information

Trade Name: Db a Olive Garden
Address: 7021 S Memorial Drive

Tulsa, OK 74133

Legal Name: GMRI, Inc.
EIN: 59-1219168
County: Tulsa
NAICS Code: 722110
No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 11/14/2013 BNPI:
To: 11/13/2015 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

Total Violations Under FLSA: 1 \$0.00

WHISARD Compliance Action Report

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

10.0hrs. Limited investigation. Enterprise coverage under Section 203 (s)(1)(A)(i)iii). Subject firm has more than 50 EEs. Therefore, subject to the FLSNM break time requirement. Exemptions were not explore. (b) (7)(E). No section 6, 7, or 12. Section 11 violations for failure to have FLSA and EPPA posters. FC was held 11/13/15. ER ATC with RK violation. WHI provided HRG, FS#s44, 28D, 77A, Reg. part 541, 785, 778, 516, and CL101. Recommend case to be closed (b) (7)(E)

WHI Signature: _____ Date: 11/13/2015

Reviewed By: _____ Date: _____

GMRI, Inc.
Db a Olive Garden
7021 South Memorial Drive
Tulsa, OK 74133
EIN: 59-3305930

Case ID: 1774278

Case File Number: 2015-273-03417

FLSA NARRATIVE REPORT

COVERAGE

The subject firm is an American casual dining full service restaurant company with more than 1,534 locations in the US and Canada. They operate under the following brands: Olive Garden, Red Lobster, Bahama Breeze, Seasons 52, Longhorn Steakhouse, The Capital Grille and Eddie V's. Enterprise coverage under the FLSA 203(s) (1)(A)(i)(ii) would be applicable because the ADV is above \$500,000. The subject firm annual dollar volume (ADV) is as follows (see exh. C-1a2 and C-1b1-1b3):

2014: (b) (4) 2013: (b) (4) 2012: (b) (4)

and

At least two full time employees handle good that has moved in interstate commerce such as food service products and premium alcoholic beverages from Texas (see exh. C-1a2). Therefore, all employees of the establishment were covered during this period of investigation.

Individual Coverage: The servers process credit card transactions on daily basis.

Period of investigation: The investigative period begins 11/14/2013 to 11/13/2015.

Scope of Investigation: Limited investigation.

Nature of Business: This employer is a restaurant chain specialized in Italian-American cuisine. The NAICS for this establishment is 722110. The subject firm workweek is from Monday to Sunday. All employees are paid on a weekly pay period. The employees used the computer to clock in/out with an employee identification number and a badge. The employer has (b) (4) employees at this location and (b) (4) employees for the entire enterprise (see exh. C-1a2).

Business Structure: The subject firm was incorporated in the state of Florida in March 1999. The corporate address is 1000 Darden Center Drive Orlando, FL 32837. The legal name of the specific establishment investigated is GMRI, Inc which is a subsidiary of the parent company, Darden Restaurants, Inc. Darden Restaurants, Inc. is a publicly traded company. A list of the corporate officers has been provided (see *exh. C-2a3-2a4*).

Section 3(d) Employer: Debra K. Holmes manages the daily operations of this location. Specifically, she handle the operation of the company and deals with employment such as payroll, employee benefits, setting pay rates, hiring and terminations. She acts directly in the interest of the employer in relation to an employee. Therefore, she meets the definition of an employer under section 3(d) of the FLSA (see *exh. B-1-2*).

Joint Employment and Employment Relationship: Joint employment with any other enterprise did not appear to exist.

FMLA: Coverage under the Family Medical Leave Act does apply to the firm. However, WHI did not request to review the employer's FMLA policy.

MODO: The Jacksonville, FL District Office is the MODO. (b) (7)(E)

see *exh. D-1a1-1a3*.

EXEMPTIONS

WHI did not address any exemptions under Fair Labor Standard Nursing Mothers. Based upon ER recent history with WHD, exemptions does not appear to be an issue.

STATUS OF COMPLIANCE

Reason for Investigation: This investigation was originally (b) (7)(E) (b) (6), (b) (7)(C) (b) (7)(E) the employer is not giving (b) (6), (b) (7)(C) time to express milk. (b) (6), (b) (7)(C) stated (b) (6), (b) (7)(C) has to struggle every day since (b) (6), (b) (7)(C) returned back to work. Also, (b) (7)(E) management would constantly walk in and out while (b) (6), (b) (7)(C) is pumping. Also, management asked (b) (6), (b) (7)(C) to pump in the bathroom. (b) (6), (b) (7)(C) stated that rather than letting (b) (6), (b) (7)(C) pump in the office, they sent (b) (6), (b) (7)(C) home. Based upon another nursing mother interview statement, (b) (7)(E) (b) (6), (b) (7)(C). Therefore, no monetary violations found (see *exh. B-1-2*).

History: Darden Restaurant (parent company) has nationwide history with WHD since 1995 (see *Whisard under ER History Research*). However, this particular location has no history with WHD.

Section 6-Minimum Wage: No apparent violations found.

Section 7-Overtime: No apparent violations found.

Section 11- Record Keeping (RK): According to 516.4, the employer failed to post and keep posted notices (FLSA and EPPA poster) explaining the Act at this establishment in an area that is frequented by employees. Therefore, record keeping violations were found.

Section 12- Child Labor (CL): During the tour of the establishment, no apparent violations found.

Section 16(b): Based on information provided at the initial conference, this employer is not the subject of any lawsuits involving the FLSA.

Section 16(e): The firm was advised of the basis for the potential assessment of civil money penalties. WHI stressed the importance of maintaining compliance.

DISPOSITION

A final conference was held on November 13, 2015 at the employer's establishment located at 7021 South Memorial Drive Tulsa, OK 74133. For this meeting, we have Debora K. Holmes and US DOL WHI (b) (6), (b) (7)(C) WHI explained the process in WHD establishing coverage under enterprise and/or individual coverage. WHI informed the employer that WHD established FLSA coverage under enterprise. The general provisions of the section 7(r) of the FLSA were discussed. An employer shall provide:

- A reasonable break time for an employee to express breast milk for (b) (6), (b) (7)(C) nursing child for 1 year after the

- child's birth each time such employee has need to express the milk; and
- a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk.
- Employers are not required under the FLSA to compensate nursing mothers for breaks taken for the purpose of expressing milk.
- An employer that employs less than 50 employees shall not be subject to the requirements of this subsection, if such requirements would impose an undue hardship by causing the employer significant difficulty or expense when considered in relation to the size, financial resources, nature, or structure of the employer's business.
- Nothing in this subsection shall preempt a State law that provides greater protections to employees than the protections provided for under this subsection.

WHI inspected the employer's designated area for the nursing mothers to express milk. It was determined that the manager's office was a sufficient area (an outlet, shield and free from intrusion) (see exh. D4a1-4a2). The employer is in the process of developing a new area away from the manager's office for the nursing mothers to express milk but this area does not meet the required standards at this time. The employer was made aware that the area needs a chair and the door need to be secure (see exh. D-4a3-4a4).

Regarding section 11 violations: The employer was informed that a notice explaining the Act was required to be posted by any employer employing any employees subject to the minimum wage provisions under the law. Ms. Holmes said that they were doing some cleaning and the posters were disposed. WHI emailed her the FLSA and EPPA posters. Ms. Holmes stated that she will have the required posters be posted by the end of close of business.

Civil Money Penalties (CMP): WHI discussed the possibility of CMP assessment, and the employer indicated that she understood why civil money penalties could be assessed in an investigation.

(b) (6), (b) (7)(C) Notification: On November 13, 2015, (b) (6), (b) (7)(C) to be notified of this investigation result.

Publications Provided: HRG, appt std letter, FS#22, 23, 28D, 44, 73, 77A, WH1261, WH1262, WH1281, WH1312, WH1318, and WH1330 during initial/final conference. The manager does not have access to the dol.gov website at the establishment.

Recommendations: WHI recommends that the case be closed (b) (7)(E) .

Dbu Olive Garden Case ID: 1774278

Future contact/correspondence:

Lisa Graening (Legal Counselor)

1000 Darden Center Drive

Orlando, FL 32837

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F: (407) 241-6325

Email: LGraening@arden.com

(b) (6), (b) (7)(C)

Wage and Hour Investigator

11/13/2015

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1777664 Originating District: Denver CO District Office
Local Filing Number: 2016-174-11477 Investigating District: Denver CO District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 11/24/2015
Assignment Date: 12/01/2015

Employer Information

Trade Name: Time Warner Cable Legal Name: Time Warner Cable Pacific West LLC
Address: 2221 E Bijou St EIN: 61-1448687
County: El Paso
NAICS Code: 515210
Colorado Springs, CO80909 No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 12/16/2013 BNPI:
To: 12/15/2015 Reinvestigation: ☒
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

(b) (7)(E) Ltd: Ent3(s)(1)(a) ADV (b) (4): FLSNM Reasonable Breaks (1 ee) EE told to adhere to 15-minute breaks when 20-30 minutes was needed. 1-29-16 FC on phone w/ Staff Att Greg Drake, HR Dir Farid Jabbour, & HR Spec Bonnie Glasco, ATC; FLSA, HRG, 312, FSS: 22, 28D, 44, 73, & 77A.

WHI Signature: _____ Date: 01/29/2016

Reviewed By: _____ Date: _____

Time Warner Cable
2221 E Bijou St
Colorado Springs, CO 80909

Case # 1777664
FEIN: 61-144-8687

Contact: Mr. Greg Drake, Staff Counsel

E-mail: greg.drake@twcable.com
Fax: 310-606-9396
Phone: 310-647-5762

Send future correspondence to:

Time Warner Cable Legal Department
Attn: Mr Greg Drake
550 N. Continental Blvd, Ste 250
El Segundo, CA 90245

Fair Labor Standards Act Narrative

COVERAGE

Time Warner Cable is a global telecommunications company. The legal name of the company at this facility is Time Warner Cable Pacific West, LLC which is owned by Time Warner Cable, Inc which is headquartered in New York City, New York. The firm is a publicly traded company 100% owned by shareholders, and the company officers are President; Sr VP Treasurer; Sr VP Secretary Dinesh, Jane; Matthew Segel; Christman, David. It was formed in Delaware on 02/06/2012. There are (b) (4) employees at this location, none of whom are minors.

All employees are covered on an enterprise basis under FLSA section 3(s)(1)(A) during the investigative period of 12/16/2013 to 12/15/2015. The annual dollar volume for the last three years was over (b) (4)

(b) (4) All employees handle goods that have moved in commerce including computers, telephones, and furniture. (See exhibit C-1)

Independent Contractor: Not investigated due to the limited investigation.

Non-immigrant workers: The facility did not use the services of H-visa non-immigrant workers.

The 3(d) employers are the division managers who set company policies and procedures, direct the work of all the employees and hire and fire employees at the establishment.

A Handy Reference Guide was given to HR Business Manager Farid Jabbour and Staff Attorney Greg Drake at the initial conference. There are no known 16(b) actions pending against the employer. The employer has more than 50 employees, and a copy of Fact Sheet 28D was not given to the employer.

MODO: The firm has branches nation-wide. The MODO is the New York City District Office. (b) (7)(E)

(See exhibit D-1)

EXEMPTIONS

None investigated as a limited investigation.

STATUS OF COMPLIANCE

This investigation was a limited investigation (b) (7)(E). (b) (6), (b) (7)(C), (b) (7)(F) that (b) (6), (b) (7)(F) was not being allowed to take reasonable lactation breaks consistent with (b) (6), (b) (7)(F) doctor's request after (b) (6), (b) (7)(F) returned to work following the birth of (b) (6), (b) (7)(F) child. (b) (7)(E)

Violation Summary: A reasonable break time violation occurred due to unnecessary restrictions concerning the length of nursing breaks for one employee.

History: The firm has extensive case history. (See Exhibit C-6) However, the case history does not include any investigation of FLSNM.

Section 6: A review of the profile pay period did not indicate any violations.

Section 7: (FLSNM) The firm has more than 50 employees and did not claim any hardship for implementing break time for nursing mothers.

- a. **Nursing Location.** No violation. During the period of investigation, the firm directed that nursing mothers use 2 different rooms for nursing/lactating; prior to the final conference, a third room was designated that replaced one of the other 2 rooms which had also doubled as an office. Every room had a sink, and a refrigerator was available for mothers to use outside the HR offices. However, at times when only one nursing room was available and there were 2 employees who needed to use it, the other employee would seek out another location such as someone's office or a break room. (See Exhibit C-8 for diagrams and photos)

1) **Nursing Room #1: Front Office.** According to HR Business Manager Farid Jabbour, the room designated for nursing/lactating was an office just inside the door near the security desk. In 2014 when several mothers were nursing/lactating, a schedule was established to avoid conflicts when using this room. (See Exhibit C-7) After (b) (6), (b) (7)(C) returned to work following the birth of (b) (6), (b) (7)(C) child, this room was used as an office by another employee. At times, this other employee would vacate the room when it was needed for nursing/lactating. However, at other times another room was used. Soon after the initial conference, this room underwent scheduled renovation and is no longer one of the designated as a nursing room. (See Exhibits C-8 c-e)

2) **Nursing Room #2: Small Room Inside Employee Women's Bathroom.** This is a small room with a separate door just inside the women's bathroom centrally located on the main floor where the employees work. This room was not presented to Investigator (b) (6), (b) (7)(C) as one of the nursing rooms during the initial conference tour of the establishment due to confusion over another room located near another set of bathrooms that was under renovation to be used in the future as a nursing room (See Nursing Room #4). Since Nursing Room #1 was often occupied by the employee who worked there or unavailable due to renovation and only Nursing Room #2 being available, there were instances when 2 employees needed to lactate at the same time causing overlap. After the first time that overlap occurred, HR Specialist Bonnie Glasco sent out an email with a schedule letting managers know the employees' lactating schedule which also noted that there was still the potential for overlap. (See Exhibit C-7d) When overlap continued to occur, typically Employee (b) (6), (b) (7)(C) was the second one to arrive at Nursing Room #2 and would take it upon

(b) (6), (b) (7)(C) to find other rooms to utilize for (b) (6), (b) (7)(C) lactation breaks; these other rooms would be offices temporarily vacated by their occupants or the supervisor's break room collectively referred to as Nursing Rooms #3. (See Exhibits C-8 h-j)

3) **Nursing Rooms #3: Ad hoc Rooms Found by Employee during Overlap.** When utilizing various rooms due to overlap with another employee already using Nursing Room #2, Employee (b) (6), (b) (7)(C) would place a "Do Not Disturb/Knock Before Entering" sign on the door claims that other employees walked in on (b) (6), (b) (7)(C) during (b) (6), (b) (7)(C) lactating breaks occasionally. However, (b) (6), (b) (7)(C) only reported one incident to HR Specialist Glasco which occurred on January 20, 2016. (See Exhibits C-8 k & l)

4) **Nursing Room #4: Primary Nursing Room near Visitor Bathrooms.** This room is located in a room adjacent to the alcove between the visitor area bathrooms and was under renovation at the time of the initial conference. Beginning on January 24, 2016, this room became operational as the primary nursing room and is equipped with a sink, chair, small refrigerator, and door lock. (See Exhibits C-8 f & g)

- b. **Reasonable Break Time.** A violation occurred due to (b) (6), (b) (7)(C) being told that (b) (6), (b) (7)(C) could use no more than 15 minutes designated as rest breaks rather than the 20 minutes it usually took for (b) (6), (b) (7)(C) to be away from work accomplish lactating. In October 2015, Supervisor (b) (6), (b) (7)(C) confronted (b) (6), (b) (7)(C) about (b) (6), (b) (7)(C) lactating breaks taking more than 15 minutes and was referred to HR Specialist Bonnie Glasco who instructed (b) (6), (b) (7)(C) that the breaks needed to be just 15 minutes. At the time of the initial conference, (b) (6), (b) (7)(C) had been placed in a training status that was scheduled prior to the birth of (b) (6), (b) (7)(C) child which has allowed (b) (6), (b) (7)(C) the flexibility to take breaks of reasonable length for lactating. Although (b) (6), (b) (7)(C) had expressed concern about the frequency of (b) (6), (b) (7)(C) breaks prior to being placed in training status, according to HR Business Manager Farid Jabbour, there did not appear to be any problems with frequency of the breaks since he would observe here placing bottles in the refrigerator outside his office about 3 times a day. (See Exhibit C-8b) Currently, a schedule is in place for the two employees who are taking nursing breaks that are reasonably long enough for them to accomplish their lactating.

Section 11: A review of the profile pay period did not indicate any violations.

Section 12: There were no minors who worked at this branch during the period of investigation.

DISPOSITION

A final conference was held on the telephone with Staff Attorney Greg Drake, HR Director Farid Jabbour, and HR Specialist Bonnie Glasco at 1:00pm January 29, 2016. Investigator (b) (6), (b) (7)(C) represented Wage & Hour extensively discussed coverage under the FLSA, the investigative process, and break time for nursing mother regulations.

First, break locations were discussed. Although an intrusion had occurred when an employee sought out (b) (6), (b) (7)(C) own break room rather than contacting HR when an overlap with another employee occurred, no violation was cited because the employer had provided a schedule and a private lactation location. The company is in compliance, currently with 2 available nursing rooms and will let employees know that they should contact HR if there is a problem or overlap with one of the rooms. Although one of the designated nursing rooms is inside a bathroom, it is separated by a door with a sign on it to prevent intrusion and not within the bathroom itself. **The employers agreed to continue to comply by making sure nursing mothers have a room free from intrusion other than a bathroom for lactating breaks.**

Next, reasonable breaks were discussed. A reasonable break violation occurred with an employee was told that (b) (6), (b) (7)(C) needed to adhere to a 15-minute break policy rather than a longer break that provided enough time for lactating. Similar guidance was given to another employee who ignored the instructions but was never questioned about it. Reason for the violation: The employer claimed that there was confusion between guidance given by the first-line supervisor and guidance given by HR. Investigator (b) (6), (b) (7)(C) explained the concept of reasonableness as it pertains to break time for nursing mothers and that even with a schedule in place, there may be instances when schedule can be deviated from due to the needs of the mother as long as it is reasonable. Investigator (b) (6), (b) (7)(C) explained the importance of the supervisory chain of nursing mothers to have understand the concepts in Fact Sheet 73 and for them to have someone in HR go approach when there are questions. Investigator (b) (6), (b) (7)(C) provided a copy of WH Pub 1312 and Fact Sheets 22 and 73. **The employers agreed to comply by providing a copy of Fact Sheet 73 to supervisors and designating an HR point of contact for nursing break matters.**

Next, retaliation regulations were discussed. Investigator (b) (6), (b) (7)(C) explained what constitutes retaliation and that the employees who participated in the investigation are protected retaliation. Investigator (b) (6), (b) (7)(C) provided the employer with a copy of Fact Sheet 77A. **The employer agreed not to retaliate against the employees because of the investigation.**

Civil Money Penalties were discussed as they relate to subsequent investigations.

On January 29, 2016, Investigator (b) (6), (b) (7)(C) called (b) (6), (b) (7)(C), to provide notification of the results of the investigation.

(b) (7)(E)

Publications: FLSA, HRG, 312, FSs: 22, 28D, 44, 73, & 77A.

(b) (6), (b) (7)(C)

Time Warner Cable Case ID: 1777664

WHISARD Compliance Action Report

U.S. Department of Labor Wage and Hour Division

Case ID: 1784891 Originating District: New Orleans LA District Office
Local Filing Number: 2016-260-10812 Investigating District: New Orleans LA District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 02/24/2016
Assignment Date: 02/24/2016

Employer Information

Trade Name: Orleans Parish Sheriff Office Legal Name: Orleans Parish Sheriff Office
Address: 2800 Perdido Street EIN: 72-0950773
County: Orleans
NAICS Code: 09610
No. Of Employees: 823
New Orleans, LA 70119

Investigation Information

Period Investigated From: 02/27/2014 BNPI: 3
To: 02/25/2016 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	2	\$0.00	\$0.00	\$0.00	\$0.00	

FMLA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FMLA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

25.5 Hrs. Sec3(s)1(c) Public Entity. ^{(b) (7)(E)} Sec3(r)1(B) Violations as ER failed to Provide A space other than a bathroom for lactating mothers. ^{(b) (7)(E)} ER ATFC by providing a space that is not a bathroom shielded from view and free from intrusion. Pubs provided HRG, FS # 21, 22, 23, 28D, Part 516, 778, and 785. Agency Memorandum was issued to notify all lactating mothers. Case is recommended to be closed ^{(b) (7)(E)}

WHI Signature: _____ Date: 04/05/2016

Reviewed By: _____ Date: _____

Orleans Parish Sheriff's Office
2800 Perdido Street
New Orleans, La. 70119
Phone: 504-827-8505

EIN: 72-0950773

FLSNM - Narrative

COVERAGE

An initial conference was held at the establishment on 02/25/2016. Present was the Human Resource Director, Mrs. Seandra Buchanan. WHI (b) (6), (b) (7)(C) represented Wage and Hour division. WHI (b) (6), (b) (7)(C) Provided Mrs. Buchanan a copy of the FLSA Act, Handy Reference Guide, Fact sheets # 21, 22, 23, 28 D, 73, 77A, Part 516, 778 and 785.

Nature of Business: Subject firm is the Orleans Parish Sheriff's Office which is a municipality providing custodial care to inmates housed in the Orleans Parish Jail.

Business Structure: Subject firm is a Public Agency in accordance with Section 3(s)(1)(C) of the Act. Subject firm registered in the State of Louisiana in 1967 as a municipality. Please be advised Orleans Parish Sheriff Office has had a subcontract with Correct Care Solutions that provides medical staffing to the facility (See Exhibits B-1).

New Facility Main Location:

2800 -3000 blocks of Perdido St.
New Orleans LA 701(See Exhibit C-3)

2013 - \$124,716,894

2014 - \$82,366,674

2015 - \$86,973,049.82 (unaudited)

FLSA 3(s)(1)(c) Coverage is applicable. Subject firm's employees are engaged in an activity of a public agency, as they provide custodial care to inmates housed in the county jail. All employees of the establishment were covered on an enterprise basis under Section 3(s)(1)(C) for the entire investigative period.

FMLA §825.104-Subject firm employed over 50 or more employees within a 75 mile radius, thus the employer was a covered employer under the FMLA. The employer's FMLA policy was reviewed and found to be in compliance.

Section 3(d) Employer: Human Resource Director Seandra Buchanan was found to be the 3(d) employer as she was responsible for hiring and firing employees and directing the work of employees. Additionally, Mrs. Buchanan was the point of contact throughout the investigation.

Workforce: Subject firm was found to have approximately 823 employees.

MOD0: (b) (7)(E)

EXEMPTIONS

Sec 13 (a) Exemptions were not explored due to the limited case action. (b) (6), (b) (7)(C) and affected individuals are hourly employees.

STATUS OF COMPLIANCE

Limited Investigation: This Investigation was limited to the Nursing mothers.

Prior History: Subject Firm has no prior FLSNM history.

Investigative Period: 02/27/2014 to 02/25/2016

(b) (7)(E)

Reason for Investigation: The case was (b) (7)(E) (b) (6), (b) (7)(C) (a lactating mother). (b) (6), (b) (7)(C) (b) (7)(E) the employer failed to provide a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk as required under the Section 7 of the Fair Labor Standards Act, as amended by the Patient Protection and Affordable Care Act which took effect on March 23, 2010. (b) (6), (b) (7)(C) (b) (7)(E) lactating mothers use designated place in the locker. (b) (6), (b) (7)(C) explained that space is not shielded from the view (See Exhibits B-2). Later the employer offered lactating mothers several bathrooms in the visit and second floor of the facility.

Section 6: was not explored due to the limited case action.

Section 7: Sec 7(r) Violations were applicable

The requirements under 7(r) of the FLSA were specifically addressed:

- (1) An employer shall provide—
 - (A) a reasonable break time for an employee to express breast milk for (b) (6) nursing child for 1 year after the child's birth each time such employee has need to express the milk; and

The employer provided a reasonable break time for the employee. The requirement is for a break when needed for a reasonable amount of time was met. There is no indication (b) (6), (b) (7)(C) could not go on a nursing break when needed (See Exhibits B-1, B-2 and C-2-d).

- (B) a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk.

Employer had a designated an open locker area as lactating room. The area is not shielded from view and not free from intrusion from coworkers (See Exhibits E-1 to E-7). Moreover, (b) (6), (b) (7)(C) and other lactating mothers that were interviewed indicated that employer offered the lactating mothers three other areas to use but they were all there bathrooms (See Exhibits B-1 and B-2).

(2) An employer shall not be required to compensate an employee receiving reasonable break time under paragraph (1) for any work time spent for such purpose.

The employer and (b) (6), (b) (7)(C) stated that nursing mothers do not clock out during the break (See Exhibits B-1 and B-2).

(3) An employer that employs less than 50 employees shall not be subject to the requirements of this subsection, if such requirements would impose an undue hardship by causing the employer significant difficulty or expense when considered in relation to the size, financial resources, nature, or structure of the employer's business.

Not Applicable,. The employer employs more than 50 Employees (See Exhibit C-2-b).

(4) Nothing in this subsection shall preempt a State law that provides greater protections to employees than the protections provided for under this subsection.

No Louisiana law was preempted.

Section 11: Investigative Findings did not disclose Record Keeping Violations.

Section 12: No employment of minors was observed or found in employment records (b) (7)(E) via employee interviews during the investigative period. (See exhibits B-1 through B-2).

DISPOSITION

A final conference was held via telephone with Ms. Seandra Buchanan, Vice President of Human

Resources Director on April 1, 2016. WHI (b) (6), (b) (7)(C) represented the Wage & Hour Division.

The investigative process, coverage, exemptions and the requirements of Sections 6, 7, 11, and 12 of the FLSA were discussed. Section 7(r) was discussed in detail.

WHI (b) (6), (b) (7)(C) informed the employer of (b) (6), (b) (7)(C) responsibilities under the FLSA Section 7(r) and that the FLSA had been amended by the Patient and Affordable Care Act (PPACA) and required employers to provide reasonable break time for an employee to express milk and that the employer is required to provide a place, other than a bathroom, that is shielded from view and free from intrusion from co-workers and the public, which may be used by an employee.

WHI (b) (6), (b) (7)(C) determined the employer met the requirement of Sec 7(r)1(A) by providing nursing mothers a break when needed for a reasonable amount of time. There is no indication (b) (6), (b) (7)(C) or other lactating mothers could not go on a nursing break when needed (See Exhibits B-1 and B-2).

WHI (b) (6), (b) (7)(C) determined that Employer failed to provide a place, other than a bathroom, for the lactating mothers. WHI addressed lactating mothers and explained that they were lactating in the locker and bathrooms as the designated lactating rooms (1st and 2ed floors) as regulations clearly specified that lactating should not be a bathroom.

Mrs. Seandra Buchanan stated that she understood the requirements and she stated that she was not aware of the exact requirements of the lactating place as specified by the law. WHI (b) (6), (b) (7)(C) referred employer to <http://www.dol.gov/whd/nursingmothers/> web site and Fact Sheet #73 "Break Time for Nursing Mothers under the FLSA".

The employer agreed to comply with the FLSNM. Mrs. Buchanan stated that the locker area and bathrooms in 1st and 2ed floors would not be used as lactating room anymore. Instead, 1 room in facility would be designated for lactating mothers that are employed by Orleans Parish Sheriff Office and all its subcontractors as specified by the Fact Sheet 73. She clearly explained that all employees of subcontractor will have access to the room per their contractual obligations.

Room, other than a bathroom:

Room Number G1092 is located in the first floor. The room is currently used by few medical staffs between 9:00am and 9:30am on Mondays and 9:00am to 10:00am on Thursdays. The room is made available for all lactating mothers only for the remaining time (See Exhibit E-11).

Shielded from view:

The room has two windows. However, curtains are currently used to provide complete privacy (See Exhibits E-12).

Free from intrusion from co-workers and the public:

Designated room has restricted access. Only staff that is listed on the lactating mothers list would be allowed to the room, if it is not occupied, remotely through the control center (See Exhibits E-10, E-14 & E-15). A sign will be displayed at the room so no one will use it if it is already occupied (See Exhibit E-13).

Storage for milk:

Mrs. Buchanan indicated that the refrigerator was kept in the locker room and it is designated for the lactating mothers only (See Exhibits E-2, E-7 E-8, and E-9).

Finally, WHI (b) (6), (b) (7)(C) explained to employer that the designated room meets the specifications as a place for lactating but the employer needs to provide lactating mother information about the availability of this room.

Mrs. Buchanan published an interoffice memorandum While WHI (b) (6), (b) (7)(C) was on site. Mrs. Buchanan also called in the jail warden (b) (6), (b) (7)(C) and explained Sec 7(r)1 requirements. Mrs. Ford also mentioned that guidance would be added to the Leave Policy and adding the information listed on the Break time for nursing mothers: employees' rights card to ensure that all lactating mothers receive this information (See Exhibit D-2 & D-3)

Mrs. Buchanan also agreed to add a link to the WHD website to the list of agencies that are listed under the useful links public page. Mrs. Buchanan explained that this will be useful for the agency's employees as well as the site visitors. Mrs. Buchanan expressed full cooperation with maintenance of compliance of laws enforced by the Wage and Hour Division (See Exhibit D-4).

Notification: (b) (6), (b) (7)(C) was notified of the results of the investigation on 04/04/2016. (b) (6), (b) (7)(C) also explained that employer advised (b) (6), (b) (7)(C) about the room and how to get access to it.

Publications: The employer was provided the following publications: Handy Reference Guide, Fact sheets # 21, fact sheets 21, 22, 23, 28 D, 73, 77A, Part 516, 778 and 785.

Recommendation: Recommend the case be concluded (b) (7)(E)

ER Representative:

Mrs. Seandra Buchanan
2800 Perdido Street
New Orleans, La. 70119
Phone: 504-827-8505

(b) (6), (b) (7)(C)

Date

04/04/2016

Wage and Hour Investigator

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1796954 Originating District: Denver CO District Office
Local Filing Number: 2016-174-11940 Investigating District: Denver CO District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 07/18/2016
Assignment Date: 07/18/2016

Employer Information

Trade Name: Arby's: Brookings Legal Name: Heap Big Beef, Inc.
Address: 1818 6th Street EIN: 37-1460839
County: Brookings
NAICS Code: 722211
No. Of Employees: (b) (4)
Brookings, SD57006

Investigation Information

Period Investigated From: 01/01/2016 BNPI:
To: 07/20/2016 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

Coverage: ER has 5 locations with approx (b)(4) EE's per location. ER asserted more than \$500K ADV. Section 6: N/A. Section 7: fail to allow nursing mother to express without doctors note. Section 11: N/A. Section 12: N/A. FC with ER Dan Wiess on 01/12/2017. ER ATC/ATFC with FLSANM provisions. recommend admin close.

WHI Signature: _____ Date: 01/12/2017

Reviewed By: _____ Date: _____

WHISARD Compliance Action Report

U.S. Department of Labor Wage and Hour Division

Case ID: 1800245 Originating District: McAllen District Office
Local Filing Number: 2016-314-03548 Investigating District: McAllen District Office
WHMIS Case Number: Lead Investigator: [REDACTED]
Registration Date: 08/25/2016
Assignment Date: 08/25/2016

Employer Information

Trade Name: Doctors Hospital at Renaissance Legal Name: Doctors Hospital at Renaissance, LTD.
Address: 5501 S. McColl EIN: 74-2802643
County: Hidalgo
NAICS Code: 09660
Edinburg, TX78539 No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 08/27/2014 BNPI:
To: 08/25/2016 Reinvestigation: ☒
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Full Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

Cov 3(s)(1)(b) and 207 (r) ER has more than 50 EEs; (b) (7)(E); SOC: (b) (7)(E) ER did not provide a place for nursing mothers that was available when needed and was free from intrusion as per section 207(r). (b) (7)(E); IC/FC with ER in house rep Paul Bollinger, ER has made a designated place for nursing mothers that is available and has allowed break time for expressing their milk. ER ATFC. PUBS provided HRF, FS 44, FS 77A, FS 27D, FS 73; Recomd adm closure.

WHI Signature: _____ Date: 10/03/2016

Reviewed By: _____ Date: _____

Doctors Hospital at Renaissance, Ltd
5501 S. McColl Rd.
Edinburg, Texas 78539

Local Filing No: 2016-314-03548
Case ID: 1800245

Contact:
Paul Bollinger
Deputy General Counsel
5501 S. McColl Rd.
Edinburg, Texas 78539
(956) 362-7364

Fair Labor Standards Act /Break Time for Nursing Mothers

Coverage:

Doctors Hospital at Renaissance operates as a hospital and employs more than (b) (4) employees. All employees are covered under §3(s) (1) (b) of the FLSA as a named activity. Since there are more than 50 employees, the coverage includes §207(r); the nursing mothers provision of the FLSA.
(See Exhibit C-1)

Period of Investigation: 08/27/2014 to 08/25/2016; the investigation was limited to the Break Time for Nursing Mothers provision of Section 7(r) under the FLSA and limited to the issues (b) (7)(E) .

Employment Relationship:

Employer hired all the nursing staff, directs their work and sets the rate of pay and pays the workers directly. An employment relationship was found applicable between Doctors Hospital and the employees (See Exhibit B-3)

Section 203(d) Employer: – Susan Turley- President, Norma Teran-Executive Vice President/Chief Nursing Officer and Erin Quin, Recruiting Manager are employers that meet the definition of Section 3(d). They are involved in the daily operations of the business and act directly or indirectly in the interest

of the employer in relation to the employees. (See Exhibit B-3)

MODO: Employer is a multi-unit employer and the MDO is the McAllen District Office: (b) (7) (E)

Case Associated (D-1 through D-6)

Exemptions:

None Claimed – (b) (6), (b) (7)(C) is an hourly non-exempt employee. (See Exhibit B-3 through B-3-b)

Prior Investigative History:

No prior history for Section 7(r)

Status of Compliance:

Reason for Investigation:

(b) (6), (b) (7)(C)

This investigation was initiated (b) (7)(E) (b) (6), (b) (7)(C) (b) (7)(E) there was not an area provided to express their milk during the work day that was shielded from view and free from intrusion from co-workers and the public. Currently employer advised employee to use the conference room when it is not in use for meetings or lunch breaks. The space was not available when needed. (b) (7)(E) and the company agreed to make available the appropriate space that was to all nursing mothers who would need it. (See Exhibit B-3 through B-3-b)

207(r) (1) (A) –Compliance: Employers to provide “a reasonable break time” for an employee to express milk “each time” such employee has need to express the milk. (frequency, duration, or complete denial):Employee interviews confirm that employer did provide adequate break time to nursing mothers to express their breast milk. (See Ex B-1 through B-3)

207(r) (1) (B) - Violation: Failure to provide adequate/functional space (bathroom not permissible, space not free from intrusion, not shielded from view): Nursing mother employees did not have a designated space to express their milk when needed or that was free from intrusion. Investigation findings reveal that employees were using a conference room, break room or locker rooms to express their milk; however it was not available when needed. Nursing mothers would often get interrupted or could not use the room due to meetings being held at the time employees would need to express their milk. These rooms were not free from intrusion from co-workers. (See Exhibit B2, B-3 through B-3-a)

207(r)(2) – Compliance: Compensation for break time: The employer paid the nursing mothers for all the break time expressing milk. Employer allowed employees to express their milk during their breaks while on the clock. The employer permits paid breaks to all employees; therefore for those nursing mothers that express milk during those breaks, they are compensated in the same way as other employees. (See Exhibit B-2)

207(r) (3) – Compliance; Undue Hardship: The employer has approximately (b) (4) employees at or near the location where the employee works and made no objection to its obligation to comply with the law.

Disposition

WHI (b) (6), (b) (7) held a final conference on September 8, 2016 via telephone with employer's Deputy General Counsel Paul Bollinger. WHI (b) (6), (b) (7) informed Mr. Bollinger that investigation was limited to Section 7(r) Break Time for Nursing Mothers under FLSA. WHI (b) (6), (b) (7) discussed coverage under Section 7(r) Break Time for Nursing Mothers and violations cited. Mr. Bollinger was informed that employer was cited for not having a space available for nursing mothers to express their milk when needed or a place that was free from intrusion. WHI (b) (6), (b) (7) discussed with employer that Section 7(r) requires covered employers to have a place, other than a bathroom, that is shielded from view and free from intrusion from co-workers and the public, which may be used by an employee to express breast milk. Employer is also required to provide reasonable break time for an employee to express breast milk for (b) (6), (b) (7) nursing child for 1 year after the child's birth each time such employee has need to express the milk.

Mr. Bollinger stated that the hospital was in the process of making a designating room for nursing mothers, but had not designated one prior to the investigation. Mr. Bollinger stated that they have already

designated a room for employees that are nursing mothers that will be available when needed and do provided the employees reasonable break time for expressing their breast milk. Employer has also informed all employees of the new designated breast pump space in the hospital. Employer did provide pictures of the room that was made just for the nursing mother employees. (See Exhibit E-2 through E-3) Mr. Bollinger also stated that employer will be creating additional breast pump spaces throughout the hospital for better access to the employees on different floors. Employer also stated that they have discussed with the charge nurses the provisions and informed them to provide reasonable break time for an employee to express their breast milk.

Employer agrees to future compliance with Section 7(r) Break Time for Nursing Mothers.

(b) (6), (b) (7)(C) Notification: **(b) (6), (b) (7)(C)**, was notified of status of case every 30 days and of final status on September 8, 2016.

Publications Provided

Publications Provided: HRG, FS 44, FS 77A, FS 27D, FS 73

Recommendation

Recommend close administratively **(b) (7)(E)**

(b) (6), (b) (7)(C), WHI
09/30/2016

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1800793 Originating District: Oklahoma City District Office
Local Filing Number: 2016-273-03931 Investigating District: Oklahoma City District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 09/01/2016
Assignment Date: 09/01/2016

Employer Information

Trade Name: Warehouse Market
Address: 6230 N Peoria

Tulsa, OK74126

Legal Name: Warehouse Market Foods Inc.
EIN: 73-0501598
County: Tulsa
NAICS Code: 445110
No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 10/15/2014
To: 10/05/2016
Investigation Type: (b) (7)(E)
Investigation Tool: Full Investigation
Compliance Status: Agree to Comply

BNPI:
Reinvestigation: ☐
Recurring Violation: ☐
Future Compliance Agreed: ☐
Involved in AG: ☐

Recommended Action:

BWFS: ☐
CMP: ☐
Litigation: ☐
Civil Action: ☐
Criminal Action: ☐
Submit For Opinion: ☐

RO/NO Review: ☐
Follow Up Investigation: ☐
Other Action: ☐
Denial of Future Certificate: ☐
BW Payment Deadline:
Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

Total Violations Under FLSA:

1

\$0.00

WHISARD Compliance Action Report

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

Firm is a large grocery store chain, easily exceeding the required ADV for enterprise coverage. (b) (7)(E) not provided a space to pump after her baby was born. (b) (7)(E). Firm has a room, will put a lock on the door & notify employees of available space to pump. The firm had a non-exempt salary pd ee that did not clock in or out. EEs bought thier uniforms. However the uniforms were \$8 which was deminimus. No monetary violation cited. Firm ATC in the future. See narratative.

WHI Signature: _____ Date: 10/26/2016

Reviewed By: _____ Date: _____

Warehouse Market
6230 N. Peoria
Tulsa, OK 74126
EIN: 73-0501598

Contact information is Christian Cox at 6207-A S. Peoria, Tulsa, OK 74136. The mailing address is P. O. Box 702280, Tulsa, OK 74170-02280. The corporate office telephone is 918-749-6621. His cellphone is 918-606-3848.

COVERAGE

Business Structure

Subject employer is a grocery store business, who has been incorporated in the state of Oklahoma since 1938. Clint V. Cox III is the President, Eddie Clark is the Chief Operating Officer, Spencer Drake Shearer is the Chief Human Resources Officer, General Manager and Christian Cox is the Chief Administrative Officer, Secretary, General Counsel. (See exhibit C-1) The corporate office is at 6207-A S. Peoria, Tulsa, OK 74136 on the northeast corner of their south Peoria store. The firm is a family business started by the Cox family. There are 16 stores in the area; Skiatook, Okmulgee, Claremore and the Tulsa metropolitan area. There are two warehouses in Tulsa and one maintenance building in Broken Arrow. (See exhibit C-3)

Coverage

The groceries are brought in from AWG, Associated Wholesale Grocer, as well as other vendors to their warehouse or directly to the stores. Although AWG has a distribution center in Oklahoma City, the corporate office is in Kansas City. The groceries travel in interstate commerce. The cashiers regularly use the credit card machine for credit and debit cards. They are individually covered. The employer's

annual dollar volume has exceeded \$500,000 for each of the past three years. (See exhibit C-1)
Therefore, as the employer's annual dollar volume has exceeded \$500,000 for the past three years and at least two employees handle goods that have moved in interstate commerce, this employer is subject to enterprise coverage. Coverage Section 3(s)1A.

3(d) Employer

(b) (6), (b) (7)(C) , Store Manager, act as the 3(d) employer, as they are directly involved in the day-to-day running of the business, hire and fire employees, and make decisions about how and when employees will be paid. (See exhibits B-3, 4, 5, 6, 7, 8, 9 & 10)

MODO

The MODO for this employer is the Oklahoma City District Office. The case was associated and MODO instructions (b) (7)(E) (See exhibit D-1).

INVESTIGATIVE HISTORY

This employer has no prior investigative history.

PERIOD OF INVESTIGATION

The period of investigation is from October 2014 to October 2016.

EXEMPTIONS

The following exemptions were tested and determined *applicable*:

Reg. 541.1 was claimed for (b) (6), (b) (7)(C) , Store Manager. (b) (6) manages the entire store. (b) (6) hires and fires, (b) (6) evaluates and directs the work of about (b) employees. (b) (6) is paid a salary of more than \$455 a week.

█ (b) (6) meets the criteria for the exemption. It is applicable. (See exhibits B-3, 4, 5, 6, 7, 8, 9 & 10)

The following exemptions were tested and found *inapplicable*:

Reg. 541.1 was not claimed for the Assistant Store Managers and the Dairy Manager, however it was reviewed. The Assistant Managers are not paid a salary. They receive overtime at time and half if they work over 40 in the week. (See exhibits B-3 & 4) Although the Dairy Manager is paid a salary, █ (b) (6), duties do not meet the criteria for the exemption. █ (b) (6) is not exempt. However █ (b) (6) does not work more than 40 hours a week. (See exhibit B-1)

STATUS OF COMPLIANCE

This investigation was initiated pursuant to █ (b) (7)(E) █ (b) (6), █ (b) (7)(C) █ (b) (7)(E) █ (b) (6), █ (b) (7)(C) was not provided space to express milk. █ (b) (7)(E) █ (b) (6), █ (b) (7)(C) was expressing milk in the bathroom or the car until it was brought to the attention of the Assistant Store Manager. A space has been provided. █ (b) (6), █ (b) (7)(C) was notified of the results of the investigation in person on September 29, 2016.

Section 6 – Minimum Wage

Some employees are not receiving at least \$7.25 or the applicable minimum wage for all hours worked. The firm requires the employees to purchase their own uniform which is a polo with the logo in the left side of the chest. The shirts are \$11 according to the interviews. The firm claimed they charge \$8.00. However the firm does not keep a record. (See exhibits B-2, 8 & 9 and D-6) Therefore the time records were spot checked for the employees paid between \$7.25 and \$7.75 the first week or so of employment. The criteria used was that full time employees, 32 hours, bought two shirts and only one for those employees working less than 32 hours a week. It was determined to be de minimums.

No monetary violation cited.

Section 7 – Overtime

Employees do receive additional half-time for all hours worked over forty in the week. (See exhibits B-2, 3, 4, 8, 9 & 10 and D-8)

7(r) – Break time for nursing mothers

The firm did not have a room for nursing mothers and was not addressing the issue. However when it did come to the attention of the Assistant Manager a room was provided. The employee nursed during breaks and was therefore on the clock. However if she took longer than the 15-minute break, it was not paid. (See exhibit B-5 and D-4)

Section 11 – Record Keeping

A comparison of employer records and employee interviews indicated that the employer is not maintaining an accurate record of employees' hours worked. The Dairy Manager did not clock in and out daily. The firm did not have record of the uniform purchases. (See exhibit B-1)

Section 12 – Child Labor

Interview statements, records and information obtained at the initial conference did not indicate any child labor violations. Although the firm hires many minors they are careful to hire those above 16 years old to avoid the hours and time standards for 14 and 15 year olds. They do not allow the minors to go in the back due to the hazardous equipment, the fork lift and trash compactor. (See exhibits B-1, 3, 4, 5, 6, 7 & 8 and D-7)

Section 16(b)

According to information obtained at the initial conference, the employer is not currently the subject of any 16(b) suits.

DISPOSITION

On October 24, 2016, a final conference was held at the corporate office with Christian Cox representing the employer and (b) (6), (b) (7)(C) representing WHD. The provisions of the FLSA and the applicability of those provisions to the employer were discussed, and the basis for potential exemptions were explained, including why they did or did not apply to employees of this establishment. Next, the employer was informed that the uniform deduction was illegal for those paid minimum wage and that the Dairy Manager was not exempt. The Nursing Mothers requirement had been discussed in detail during the opening conference. Mr. Cox agreed that the Dairy Manager did not meet the exemption criteria and stated they will put him on the clock. Mr. Cox was not sure why he was paid a salary. The firm is putting a lock on the office for mothers to express milk and make sure a room is available throughout the enterprise. Mr. Cox was surprised about the uniform deduction violation. He determined that there is not a record of the uniform purchases and that the policy is not clear about the uniforms. He stated that will be cleared up for the future. He stated that uniforms will be provided to the minimum wages employees at a rate of two for full-time employees. Mr. Cox agreed to these changes to prevent these violations from recurring in future.

After the employer had agreed to future compliance, the issue of backwages was discussed. The uniform issues was deminimus, the time to express milk is unpaid and the Dairy Manager did not work more than 40 and therefore not due any back wages. No monetary violations were cited. Mr. Cox understood. He further stated that they will review their records and if any new hire minimum wage employee had to pay for uniform in the previous 6 months they are going to pay it back to show good faith.

The employer was provided Fact Sheets (FS) 44, 77, 28D and the HRG with the appointment letter. The following pubs were provided Reg. 778, 785, 516, 541 and Child Labor Bulletin along with the HRG, FLSA poster and the Act as well as Fact Sheets #16, 22, and 38. Each publication or fact sheet provided was discussed in detail and explained how it was specifically relevant to the firm.

The possibility of civil money penalties was also discussed, and the employer stated that he understood that civil money penalties could be assessed for willful or repeat violations.

Recommendations

(b) (7)(E) it is recommended that this case be closed
no further action taken.

(b) (6), (b) (7)(C)
Investigator

Warehouse Market Case ID: 1800793

October 26, 2016

WHISARD Compliance Action Report

U.S. Department of Labor Wage and Hour Division

Case ID: 1801130 Originating District: Oklahoma City District Office
Local Filing Number: 2016-273-03947 Investigating District: Oklahoma City District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 09/07/2016
Assignment Date: 10/28/2016

Employer Information

Trade Name: Jared's Vault Legal Name: Sterling Jewelers Inc
Address: 7638 West Reno, Ste 500 EIN: 34-0630873
County: Oklahoma
NAICS Code: 448310
Oklahoma City, OK 73159 No. Of Employees: (b) (6)

Investigation Information

Period Investigated From: 07/08/2016 BNPI:
To: 08/22/2016 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☐
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: 04/21/2017
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

Total Violations Under FLSA: 1 \$0.00

WHISARD Compliance Action Report

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	1	1	\$612.12	\$612.12	\$612.12	\$612.12	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	1	Unduplicated Employees Agreed:	1
Total Amount BWs Computed:	\$612.12	Total Amount BWs Agreed:	\$612.12
Total Amount LDs Computed:	\$612.12	Total Amount LDs Agreed:	\$612.12

Conclusions & Recommendations:

3(s)(1)(B) ent. coverage & 50 + EEs; (b) (7)(E) ; FLSNM viol - sec.7(r) not provided w/space to express milk, left est. to go home to express milk, not paid for two paid breaks per policy, violation period 7/8/16 to 8/22/16, in compliance on 8/23/16 - appropriate space provided and paid breaks per policy. ER history in WHIS. MODO ID (b) . ER ATC/ATP. Pubs: FLSNM, FMLA, FS links provided

WHI Signature: _____ Date: 04/24/2017

Reviewed By: _____ Date: _____

FLSA Nursing Mother Narrative

Case Assignment Information: This investigation was initiated as (b) (7)(E) (b) (6), (b) (7)(C) [REDACTED]. This case was a limited investigation of the business under the Fair Labor Standards Act (FLSA), specific to (b) (6), (b) (7)(C) [REDACTED] under §7(r) of the FLSA, break time for nursing mothers. The case was investigated by Wage & Hour Investigator (WHI) (b) (6), (b) (7)(C) [REDACTED] of the Oklahoma City District Office, under the Fair Labor Standards Act of 1938, as amended.

Scope and Period of Investigation

A limited investigation was conducted for the time period July 8, 2016 to November 29, 2016.

Coverage

Number of Employees (Exhibit)

There were approximately (b) (4) [REDACTED] current EEs of the establishment at the time of the investigation; the enterprise, consisting of 12 establishments in Oklahoma City, OK, comprised of approximately (b) (4) [REDACTED] employees, as stipulated by the general manager, Drake Miller (Exhibit C-1).

Annual Dollar Volume (ADV)

ADV	2013	2014	2015
(Exhibits C-1)	(b) (4) [REDACTED]	[REDACTED]	[REDACTED] +

The above ADV amounts were stipulated by the general manager, Drake Miller, during the initial conference (IC).

Interstate Commerce (Exhibit C-1)

The enterprise is a retail jewelry store. For the period of investigation, the enterprise was covered under the FLSA §3(s)(1)(A). The ADV for the enterprise was over \$500,000 per year, there were more than two EEs, and all EEs handled goods produced and moved in interstate commerce. Employees handled jewelry products that were produced or manufactured outside of the state of Oklahoma, in Canada, Africa, and Russia (Exhibit C-1).

FLSA Coverage for Employer

Enterprise Coverage: As shown above, the business exceeded \$500,000 in ADV for years 2013 to 2015; there are more than two employees employed by the business; and employees regularly handled goods from out of state as required by the FLSA §3(s)(1)(a), to consider a business under enterprise coverage (Exhibit C-1).

Employee Coverage under FLSA §7(r) – Break Time for Nursing Mothers

The Patient Protection and Affordable Care Act amended section seven of the FLSA to require ERs to provide nursing mothers with a reasonable break time to express breast milk and a place, other than a bathroom, that may be used to express milk. The ERs must be covered by FLSA enterprise coverage or the EE must be individually covered. Additionally, the break time is only afforded to non-exempt EEs. Finally, the ER may claim an undue hardship exemption if the ER employs less than 50 EEs. The number of EEs is determined by counting EEs at all worksites, regardless of location or part-time status.

Employers covered under the FLSA, or employees that are individually covered under the FLSA, are also subject to the requirements under §7(r) of the FLSA:

An ER shall provide–

- (A) A reasonable break time for an EE to express breast milk for ^{(b) (6)} nursing child for one year after the child's birth each time such EE has need to express the milk; and
 - (B) A place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an EE to express breast milk.
- (2) An ER shall not be required to compensate an EE receiving reasonable break time under paragraph (1) for any work time spent for such purpose.
- (3) An ER that employs less than 50 EEs shall not be subject to the requirements of this subsection, if such requirements would impose an undue hardship by causing the ER significant difficulty or expense when considered in relation to the size, financial resources, nature, or structure of the ER's business.
- (4) Nothing in this subsection shall preempt a State law that provides greater protections to EEs than the protections provided for under this subsection.

Employee is covered under FLSA §7(r) - It has been determined that the ER is covered under enterprise coverage under the FLSA. The ER also has more than 50 EEs, which exempts the ER from claiming undue hardship as a small business. (b) (6), (b) (7)(C), is not exempt under the FLSA; therefore, the ER is subject to the requirements of FLSA §7(r).

Business Structure (Exhibits C-1)

This is a corporate owned store; Sterling Jewelers Inc., which is owned by Signet Jewelers Inc. Sterling Jewelers owns Kay's, Jared's, Zale's, and Gordon's franchise jewelry stores.

Main Office District Office (MODO)

A MODO for this employer existed under the jurisdiction of the Columbus, Ohio Area Office, MODO control (b) (7), this case file/location was associated with the MODO (Exhibit D-3).

§3(d) Employer (ER)

Drake Miller met the definition of the §3(d) employer. Drake Miller, as general manager, was involved in the daily operations of the business, had the ability to hire and hire EEs, gave instructions to EEs, and acted in the interest of the business (Exhibit C-1).

Exemptions

Not Applicable – FLSA §7(i) – Employment by retail or service establishment

The employer was a retail jewelry store and offered commissions on sales for retail staff, and for (b) (6), (b) (7)(C). (b) (6), (b) (7)(C) was (b) (6), (b) (7)(C) of (b) (6), (b) (7)(C) monthly sales. Although (b) (6), (b) (7)(C) was compensated at least one and a half times the minimum wage amount, as required under §7(i)(1), the commission amount was less than half of her total compensation, as required under §7(i)(2); therefore, (b) (6), (b) (7)(C) was not found to be exempt under the FLSA §7(i) retail establishment exemption (Exhibit B-1, and A-2 and A-3).

Status of Compliance

History

CASE ID	ER Trade Name	Case Status	Investigation Tool	Date Registered	Registration Act	ER City	ER State
1053626	Sterling Jewelers	Concluded	(b) (7)(E)	12/30/1999	FLSA	Akron	OH
1053895	Kay Jewelers	Concluded	(b) (7)(E)	01/04/2000	FLSA	Antioch	TN
1054172	Kay Jewelers	Concluded	Full Investigation	01/05/2000	FLSA	West Nyack	NY
1060103	Kay Jewelers	Concluded	(b) (7)(E)	02/08/2000	FLSA	New Port Richey	FL
1149907	Sterling Jewelers	Concluded	(b) (7)(E)	06/15/2001	FLSA	National City	CA
1426320	Sterling Jewelers	Concluded	Limited Investigation	11/17/2005	FLSA	Akron	OH
1429696	KAY JEWELERS	Concluded	Limited Investigation	12/22/2005	FMLA	Jensen Beach	FL
1461308	Kay Jewelers	Concluded	Full Investigation	11/02/2006	FLSA	Bensalem	PA
1515204	Jared Galleria Of Jewelry	Concluded	(b) (7)(E)	05/19/2008	FLSA	Boca Raton	FL
1551071	Sterling Jewelers, Incorporated	Concluded	Limited Investigation	07/01/2009	FMLA	Overland Park	KS
1560987	Kay Jewelers	Concluded	(b) (7)(E)	10/13/2009	FLSA	Biloxi	MS
1658468	Kay Jewelers	Concluded	Limited Investigation	06/04/2012	FMLA	Bay Shore	NY
1768160	Kay Jewelers	Concluded	(b) (7)(E)	08/10/2015	FLSA	West Nyack	NY

Reason for Investigation

This investigation was initiated as (b) (7)(E) (b) (6), (b) (7)(C) This case was a limited investigation of the business under the Fair Labor Standards Act (FLSA), specific to (b) (6), (b) (7)(C) under §7(r) of the FLSA, break time for nursing mothers.

(b) (7)(E) Information

(b) (6), (b) (7)(C) (b) (7)(E)

(b) (7)(E) (Exhibit D-). (b) (6), (b) (7)(C) of the ER, and began working for the ER (b) (6), (b) (7)(C) was approved for and utilized Family Medical Leave Act (FMLA) leave from April 2016 to July 2016 for the birth of (b) (6), (b) (7)(C) baby. No violations were found pertaining to FMLA.

(b) (6), (b) (7)(C) informed the corporate human resources department in Akron, OH of (b) (6), (b) (7)(C) need to express breast milk while at work and would need accommodations to do so. (b) (6), (b) (7)(C) following FMLA approved leave, (b) (6), (b) (7)(C) was not provided with a functional space to express milk. Due to the lack of space, (b) (6), (b) (7)(C) left the work site, drove to (b) (6), (b) (7)(C) home to express milk, then drove back to the establishment two to three times per day from July 8, 2016 to August 22, 2016 (Exhibit A-2, A-3 and B-1).

The ER provided all EEs with two-15 minute paid breaks per shift, for which no EEs clocked in or out; all EEs were also given one-30 minute unpaid meal period per shift. (b) (6), (b) (7)(C) used one-15 minute paid break to drive home to express milk; however, (b) (6), (b) (7)(C) was required to clock in and out for all breaks when leaving the premises and was not retroactively compensated the 15 minute paid break time for which (b) (6), (b) (7)(C) was using to express milk. (b) (6), (b) (7)(C) was then not compensated for the 15 minute breaks unlike (b) (6), (b) (7)(C) coworkers that were compensated for two-15 minute breaks per day. (b) (6), (b) (7)(C) chose to use (b) (6), (b) (7)(C) lunch break to express milk, which was typically 30 minutes of unpaid break time; however, (b) (6), (b) (7)(C) extended (b) (6), (b) (7)(C) lunch break to approximately one hour in order to eat lunch and express milk at (b) (6), (b) (7)(C) home due to lack of accommodation at the establishment; (b) (6), (b) (7)(C) was clocked in and out during this time (Exhibit A-2, A-3 and B-1).

A room was made available to (b) (6), (b) (7)(C) for the purposes of expressing milk on August 23, 2016. (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) believed that the space provided to (b) (6), (b) (7)(C) was inadequate because (b) (6), (b) (7)(C) did not believe it to be a private and functioning space for the purposes of expressing milk. Nevertheless, from August 23, 2016 to September 4, 2016 (b) (6), (b) (7)(C) was required to clock in and out while expressing milk on site. (b) (6), (b) (7)(C) used (b) (6), (b) (7)(C) compensated break time in order to express milk; however, (b) (6), (b) (7)(C) was deducted the break time because the ER required (b) (6), (b) (7)(C) clock in and out for the breaks. (b) (6), (b) (7)(C) was not retroactively compensated for the two-15 minute breaks for which all other EEs of the establishment were paid (Exhibit A-2, A-3 and B-1).

From September 5, 2016 to present, (b) (6), (b) (7)(C) was not required to clock in and out for (b) (6), (b) (7)(C) breaks in order to express milk, (b) (6), (b) (7)(C) was compensated for (b) (6), (b) (7)(C) short breaks similar to all other EEs of the ER. (b) (6), (b) (7)(C) continued to also use (b) (6), (b) (7)(C) 30 minute unpaid meal period to express milk (Exhibit B-1). The space provided to (b) (6), (b) (7)(C) by the ER to express milk remained the same, see pictures in Exhibit D-5.

§7(r) – Break Time for Nursing Mothers

As stated above, the ER is covered under the FLSA §3(s)(1)(a), enterprise coverage, and has more than 50 EEs working for the enterprise; additionally, (b) (6), (b) (7)(C) is not exempt under the FLSA, and is covered under the FLSA §7(r), break time for nursing mothers.

Employee Schedule and Breaks:

According to (b) (6), (b) (7)(C) interview statement, (b) (6), (b) (7)(C) worked five (5) days per week. (b) (6), (b) (7)(C) had every Tuesday off and (b) (6), (b) (7)(C) additional day off alternated bi-weekly between Thursday and Sunday. (b) (6), (b) (7)(C) typically worked 9:00am to 5:00pm; however, on occasion (b) (6), (b) (7)(C) worked from 1:00pm to 9:00pm. Every day (b) (6), (b) (7)(C) worked, (b) (6), (b) (7)(C) received one-30 minute meal period for which (b) (6), (b) (7)(C) clocked in and out. (b) (6), (b) (7)(C) daily hours were typically 7.5 hours x 5 days per week = 37.5 hours per week. (b) (6), (b) (7)(C) took a breaks to express milk at approximately 11:30am, 2:00pm (lunch break), and 4:00pm. When working the evening shift, from 1:00pm to 9:00pm, (b) (6), (b) (7)(C) took breaks at approximately 3:00pm, 5:30pm, and 7:30pm. (b) (6), (b) (7)(C) stated that due to (b) (6), (b) (7)(C) leaving work to express milk at (b) (6), (b) (7)(C) home, as well as not being compensated the paid short breaks; (b) (6), (b) (7)(C) worked less than (b) (6), (b) (7)(C) typical schedule of hours.

Violations found:

- From July 8, 2016 to August 22, 2016, the ER was found in violation of §7(r) of the FLSA for not providing a private and functioning space for (b) (6), (b) (7)(C) to express milk on-site of the business. This caused (b) (6), (b) (7)(C) to leave the establishment approximately two times during (b) (6), (b) (7)(C) work day to express milk at (b) (6), (b) (7)(C) home. (b) (6), (b) (7)(C) stated that it took (b) (6), (b) (7)(C) approximately 15-20 minutes to solely express milk. One time per day, (b) (6), (b) (7)(C) used (b) (6), (b) (7)(C) provided break time (one of the two-15 minute paid breaks) to drive to (b) (6), (b) (7)(C) home to express milk; however, (b) (6), (b) (7)(C) clocked in and out for these breaks and the ER did not retroactively compensate (b) (6), (b) (7)(C) for the short breaks for which (b) (6), (b) (7)(C) was taking and not compensated. Further, (b) (6), (b) (7)(C) was traveling on

average 15-20 minutes one-way (3 miles), 30 minutes roundtrip (6 miles), from leaving the establishment to arriving at (b) (6), (b) (7)(C) home in order to express milk approximately times per day. (b) (6), (b) (7)(C) took an extended lunch, of approximately one hour, to eat (b) (6), (b) (7)(C) lunch and express milk at (b) (6), (b) (7)(C) home due to lack of accommodation at the establishment; therefore, the typical 30 minute lunch period (b) (6), (b) (7)(C) took was not found to be compensable time. However, the one-15 minute break for which (b) (6), (b) (7)(C) was not compensated was found to be compensable time per the ER's policy and practice at that establishment with all EEs. The travel time for (b) (6), (b) (7)(C) unpaid meal period was also found to be compensable time due to the lack of accommodation for (b) (6), (b) (7)(C) to express milk at the establishment, which required (b) (6), (b) (7)(C) to leave the premises in order to express milk.

- On August 23, 2016, the ER provided (b) (6), (b) (7)(C) with a space at the establishment to express milk; the space provided to (b) (6), (b) (7)(C) for such purpose was found to be adequate and functional. The space was not a bathroom, nor was it in view of the public or other EEs of the establishment. The space provided to (b) (6), (b) (7)(C) by the ER was two temporary cubicle walls that joined two permanent walls in the corner of the establishment's backroom, accessed only by EEs. The space was adjacent to the bathroom, but not inside of the bathroom. Although EEs could pass by the temporary space, they could not see inside of the space, and (b) (6), (b) (7)(C) was able to lock the cubicle wall door which restricted access to the space. Additionally, an electrical outlet was accessible inside of the space in order for it to be fully functional for the purposes of expressing milk. A chair was located inside of the space as well. There was a camera located on the ceiling of the backroom; however, WHI viewed the video footage of that camera and it was unable to view the inside of the space provided. Further, the backroom had a door that locked. (b) (6), (b) (7)(C) was able to close the backroom door, if needed, and lock it as well as close the temporary space within the backroom and lock it for ensured privacy. WHI found no violations regarding the space provided to (b) (6), (b) (7)(C) for the purposes of expressing milk.
- August 23, 2016 to present, (b) (6), (b) (7)(C) was not required to clock in and out for (b) (6), (b) (7)(C) two-15 minute breaks for which (b) (6), (b) (7)(C) used to express milk. Similar to all other EEs of the establishment, (b) (6), (b) (7)(C) was compensated for short breaks, was not clocking in and out, and was able to express milk during the paid break time without time deductions. Additionally, (b) (6), (b) (7)(C) used (b) (6), (b) (7)(C) unpaid 30 minute meal time to express milk and eat at the establishment; therefore, all meal

period time was found to be uncompensable during this time period. No violations were found regarding hours worked and space provided to (b) (6), (b) (7)(C) from August 25, 2016 to present.

§15(a)(3) – Prohibited Acts and §16(b) – Penalties

§15(a) ...it shall be unlawful for any person –

To discharge or in any other manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this chapter, or has testified or is about to testify in any such proceeding, or has served or is about to serve on an industry committee.

§16(b) ...Any employer who violates the provisions of section 215(a)(3) of this title shall be liable for such legal or equitable relief as may be appropriate to effectuate the purposes of section 215(a)(3) of this title, including without limitation employment, reinstatement, promotion, and the payment of wages lost and an additional equal amount as liquidated damage

Therefore, according to the above Prohibited Acts and Penalties laws within the FLSA, the Klinghoffer Rule need not apply, and (b) (6), (b) (7)(C) is due (b) (6), (b) (7)(C) paid regular rate for hours worked under 40, not the federal minimum wage, in order to provide equitable relief under the FLSA.

Example Computation for Unpaid Breaks, Travel Time, and Mileage:

(b) (7)(E)

The time and payroll records were provided by the ER; therefore, the uncompensated break time was recorded on the provided records.

The records showed the (b) (6), (b) (7)(C) was uncompensated approximately two breaks per shift; one-15 minute break was not compensated, nor was the travel time, and one 30-minute meal period was not paid, nor was the travel time. Although (b) (6), (b) (7)(C) typical unpaid meal time was 30 minutes, (b) (6), (b) (7)(C) was required to extend this time beyond the typical unpaid 30 minutes to travel to (b) (6), (b) (7)(C) home and also express milk.

(b) (7)(E)

(b) (6), (b) (7)(C), was found to be due \$619.56 in back wages, plus and equal amount in liquidated damages, totaling \$1,239.12 (Exhibit A-1).

Disposition

The initial conference (IC) was held on November 29, 2016; WHI (b) (6), (b) (7)(C) and general manager Drake Miller were present. WHI toured the establishment, did not locate any child labor, and did locate all applicable WHD posters. Fact Sheets 77A and 44 were presented to the Drake Miller and discussed.

Basic business location information was obtained from Drake Miller and the remainder of the information obtained during the investigation was derived from the ER's attorneys. WHI determined that the business was covered under the FLSA and specifically under the regulations that cover the ER and EEs for providing accommodations for nursing mothers (FLSA §7(r)). The ER's handbook was reviewed and discussed, and the findings of the investigation were discussed; specifically, that there was a two week time period from July 8, 2016 to August 22, 2016.

As discussed under the violation section, the ER did not have appropriate accommodations for (b) (6), (b) (7)(C) to express milk at the establishment during this time frame. (b) (6), (b) (7)(C) was driving to (b) (6), (b) (7)(C) home during (b) (6), (b) (7)(C) work day, clocking out during this time, to express milk. The ER provided two 15-minute paid breaks during the workday for all employees; however, (b) (6), (b) (7)(C) clocked out during these breaks to go to (b) (6), (b) (7)(C) home to express milk and was not retroactively compensated for this time.

August 23, 2016, the ER installed a temporary cubical wall partition in the back office area of the establishment for the purposes of the complaint to express milk at the establishment and so (b) (6), (b) (7)(C) no longer needed to drive home to express milk. (b) (6), (b) (7)(C) was no longer clocking out during the time (b) (6), (b) (7)(C) expressed milk at the establishment, and was compensated for all of that time.

Violations were cited from July 8, 2016 to August 22, 2016; the ER was in compliance on August 23, 2016, following the installation of an appropriate space for (b) (6), (b) (7)(C) to express milk and the compensation of the two 15-minute paid break time.

A Settlement Agreement was signed by the ER, District Director Michael Speer for the WHD at the OKCDO, and (b) (6), (b) (7)(C). The ER agrees to future compliance with all regulations pertaining to the FLSA, FLSNM, and the FMLA. Additionally, the ER agreed to pay the back wages and liquidated damages found for (b) (6), (b) (7)(C).

(b) (6), (b) (7)(C), was found to be due under the FLSNM \$619.56 in back wages, plus and equal amount in liquidated damages, totaling \$1,239.12 (Exhibit A-1).

Publications Provided Electronically

Family Medical Leave Act regulations
FLSA Nursing Mothers (FLSA 7(r)) regulations
Fact Sheets 28D and 73
Links to Nursing Mother resources on dol.gov
Links to FMLA resources on dol.gov

Recommendations

WHI recommends administratively closing the case (b) (7)(E)
(b) (7)(E) The ER will provide a check made out to (b) (7)(E)
(b) (7)(E), less any applicable deductions, for the amount owed. WHD at OKCDO will be responsible for disseminating the check to (b) (6), (b) (7)(C)

Future Contact

Human Resources at the ER
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-or-

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WHISARD Compliance Action Report

U.S. Department of Labor Wage and Hour Division

Case ID: 1809701 Originating District: San Antonio TX District Office
Local Filing Number: 2017-310-00092 Investigating District: San Antonio TX District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 12/20/2016
Assignment Date: 12/20/2016

Employer Information

Trade Name: Bexar County Pre-trial Services Legal Name: Bexar County
Address: 207 North Comal Ste 200 EIN: 74-6002039
County: Bexar
NAICS Code: 922110
No. Of Employees: 4700
San Antonio, TX 78207

Investigation Information

Period Investigated From: 09/03/2016 BNPI:
To: 02/02/2017 Reinvestigation: ☒
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

Total Violations Under FLSNM: 2 \$0.00

WHISARD Compliance Action Report

FMLA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FMLA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

FLSNM/FMLA_ Limited to (b)(6) EE eligible. EE claims ER viol nursing mothers regs, SOC: ER failed to provide space to express milk and did not provable reasonable time to express milk. FMLA: NV. Pubs HRG, FS#13 FS#14 Coverage, FS#16, FS #21, FS#22, FS #23, FS#28 FS#43 CL non ag, FS#44 Visit to ER, FS #73 Nursing Mothers FS#77A Prohibiting Retaliation, & DOL Website. ER ATFC and ATP. No monetary findings. ER ATFC. Recommend: this case is closed, no further action.

WHI Signature: _____ Date: 02/13/2017

Reviewed By: _____ Date: _____

Fair Labor Standards Act Nursing Mothers Investigation

FLSNM Narrative Report

Case ID: 1809701

Bexar County **Federal Tax ID:** 74-6002039

DBA: Bexar County Pre Trail Services Department
207 N. Comal #200
San Antonio Texas 78207

Point of Contact:

Assistant Criminal District Attorney
Jacquelyn M. Christilles
Phone: (210) 335-2170

COVERAGE:

The subject of this investigation is the **Bexar County Pre Trail Services Department**. The county employs more than 4700 employees. All employees of the county are covered under Section 3(s)(1)(c) of the FLSA. The county was represented by Assistant Criminal District Attorney Jacquelyn M. Christilles during the course of this investigation.

Period of Investigation: This investigation was limited to (b) (6), (b) (7)(C) (b) (7)(E) the period of investigation included: September 3, 2016 to February 2, 2017

Section 207(r) of the FLSA is applicable to the employer. The employer has an average of 4700 employees.

Employee Eligibility: (b) (6), (b) (7)(C) returned to work (b) (6), (b) (7)(C) child had not reached age one (1); child (b) (6), (b) (7)(C) works for a covered employer who has more than 50 employees. No undue hardship exists.

3(d) Employer: (b) (6), (b) (7)(C), Pre Trail Services Supervisor & (b) (6), (b) (7)(C) Administrative Supervisor for Pre Trail Services, meet the definition of a Section 3(d) employer for this agency. They are involved in the daily management of the Pre Trail Services Department from payroll

verification to supervising and therefore are “acting directly or indirectly in the interest of an employer in relation to an employee.” **(See exhibits B-2)**

MODO: The San Antonio District Office is responsible for this geographic area. Employer is a MUER, case was associated. **(See exhibit D-1)**

History: Bexar County has been subject to numerous FLSA and FMLA investigations

Case ID	Trade Name	Date Registered
1762414	Bexar County Sheriff's Office	06/03/2015
1218824	Bexar County Clerk's Office (Court House)	06/12/2002
39548	Bexar County Adult Probation	03/14/1994
76903	Bexar County Sheriff Dept.	01/10/1995
179609	Bexar County Sheriff's	01/07/1993
179736	Bexar County Sheriff's	03/01/1993
180420	Bexar County Elections	08/17/1993
219565	Bexar County Sheriff's	10/01/1993
282854	Bexar County Elections Dept	04/04/1996
342681	Bexar County Elections Dept	11/26/1996
343181	Bexar County Juvenile Center	07/22/1997
343194	Bexar County Sheriff's Office	07/31/1997
399049	Bexar County, Justice Of Peace	01/15/1998
399124	Bexar County--Justice Of Peace	02/11/1998
418903	Bexar County Sheriff's Office	09/25/1998

1170128	Drug Alcohol Probation Violators Facility	10/04/2001
1183003	Bexar County Sheriffs Office	12/14/2001
1307574	Bexar County District Attorney's Office	09/02/2003
1310819	Bexar County Sheriff's Office	09/16/2003
1320703	Bexar County Sheriff's Office	10/30/2003
1357184	Bexar County Purchasing Department	05/06/2004
1359334	Bexar County District Attorney Office	05/18/2004
1360883	Bexar County Forensic Science Department	05/25/2004
1400146	Bexar County Sheriff's Department	03/22/2005
1427839	Bexar County of, Collections Office	12/05/2005
1458337	Bexar County Sheriff Department	10/04/2006
1480904	Bexar County Sheriff's Office	05/21/2007
1491019	Bexar County District Clerk's Office	08/29/2007
1495693	Bexar County Community & Development Programs	10/22/2007
1495696	Bexar County Sheriff's Office	10/22/2007
1505612	Bexar County Sheriff's Office	02/13/2008
1510071	Bexar County Sheriff Office	04/01/2008
1526143	Bexar County Sheriff's Office	09/23/2008
1552523	Bexar County - Juvenile Probation Dept.	07/16/2009
1657335	Bexar County Adult Probation	05/21/2012
1667127	Bexar County Court (Seven)	08/27/2012
1693604	Bexar County Court Six	05/06/2013
1711902	Bexar County ESD #5	11/15/2013
1719878	Bexar County Juvenile Probation	02/12/2014

EXEMPTIONS

(b) (6), (b) (7)(C) is not exempt from Section 207(r) (**see exhibit B-2**); the employer is covered and has more than 50 employees.

Other exemptions were not explored as the investigation was limited to **(b) (6), (b) (7)(C)** **(b) (7)(E)** related to the Nursing Mothers Provisions (Section 207(r)) of the Fair Labor Standards Act.

STATUS OF COMPLIANCE

Reason for investigation:

This limited investigation was initiated (b) (7)(E)

(b) (6), (b) (7)(C)

(b) (7)(E) Bexar County Pre-trial Services failed to provide adequate space to express breast milk and failed to provide reasonable break time to express breast milk. **(Refer to WH-3 Complaint information form and B-2)**

Section 207(r)(1)(A):

The employer failed to provide a reasonable break time for (b) (6), (b) (7)(C) to express breast milk for (b) (6), (b) (7)(C) nursing child. (b) (6), (b) (7)(C) was allowed to express (b) (6), (b) (7)(C) breast milk only during (b) (6), (b) (7)(C) two 15 minute breaks. (b) (6), (b) (7)(C) was not authorized to go over; in fact (b) (6), (b) (7)(C) was given a reprimand because (b) (6), (b) (7)(C) went over the 15 minute break. **(See intake documents: the letter of reprimand clearly demonstrating how the policy violates Section 207(r)(1)(A)). Specifically, the express of the milk cannot go over the two 15 minute breaks.**

Section 207(r)(1)(B):

The employer failed to provide a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public from the period of January 14th, 2017 through January 15th, 2017. **(See exhibit D-4a, communication demonstrating that no space was provided in two different occasions)**

DISPOSITON

A final conference was held via telephone on 2/07/2017 present were Attorney Jacquelyn M. Christilles representing Bexar County and WHI (b) (6), (b) (7)(C) representing the Department of Labor Wage and Hour Division. The investigator explained coverage, and that Bexar County met the coverage aspects of Sections 203(s)(1)(C) and 207(r) of the Fair Labor Standards Act.

Note: Employer was informed that this investigation was limited.

The investigator discussed the nursing mother provisions laid out in Section 207(r) of the Fair Labor Standards Act, including the violations that had occurred at the establishment.

Violations:

Failure to provide reasonable break to express milk and the issuance of a reprimand for going over the two 15 minute break, per Bexar County Policy.

Failure to provide a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public from the period of January 14th, 2017 through January 15th, 2017.

Employer's reasons

Attorney Christilles stated she was unaware that those issues were happening .She stated it was a department issue and that it was an isolated situation that occurred due to poor communication.

On behalf of Bexar County Attorney Christilles agreed to future compliance the following:

- Bexar County work force will be educated in this matter, there is a policy draft pertaining to this law that will be implemented and distributed in the near future.
- All departments will be educated on this matter.
- Although (b) (6), (b) (7)(C) is no longer an employee of Bexar County, the letter of reprimand that (b) (6), (b) (7)(C) was issued on Dec 3, 2016 will be updated to reflect or remove the section where (b) (6), (b) (7)(C) was reprimanded because (b) (6), (b) (7)(C) used more than the allowed time to express milk.

No monetary findings resulted during the investigation.

On 02/07/2017 (b) (6), (b) (7)(C) was notified of the investigation findings via telephone.

Publications provided and discussed: HRG, FS#14 Coverage, FS#16 Deductions, FS #21 Recordkeeping Requirements, FS#22 Hours Worked, FS #23 Overtime, FS #28 FMLA,

FS#43 CL non ag, FS#44 Visit to ER, FS #73 Nursing Mothers, FS#77A Prohibiting Retaliation, & DOL Website

Recommendations: Administrative close (b) (7)(E)

(b) (6), (b) (7)(C),

Wage & Hour Investigator

Feb 13, 2017

Family and Medical Leave Act Investigation

Case ID: 1809701

Bexar County

Federal Tax ID: 74-6002039

DBA: Bexar County Pre Trail Services Department

207 N. Comal #200

San Antonio Texas 78207

Point of Contact:

Assistant Criminal District Attorney

Jacquelyn M. Christilles

Phone: (210) 335-2170

Reason for Investigation

This investigation was initiated (b) (7)(E) (b) (6), (b) (7)(C)
(b) (7)(E) was notified that while on FMLA leave on leave without pay (b) (6), (b) (7)(C) would be

responsible for paying (b) (6), (b) (7)(C) employee medical premiums and also the employer's part. (b) (6), (b) (7)(C) (b) (7)(E) the firm violated (b) (6), (b) (7)(C) FMLA rights by asking (b) (6), (b) (7)(C) to pay for both parts. (See exhibits B-2).

Coverage

The subject of this investigation is a county level department, specifically the **Bexar County Pre Trail Services Department**. The county employs more than (b) (4) employees. The Department is covered under the FMLA per Regulations, Part 825.108 Public agency coverage.

3(d) Employer: (b) (6), (b) (7)(C), Pre Trail Services Supervisor & (b) (6), (b) (7)(C) Administrative Supervisor for Pre Trail Services, meet the definition of a Section 3(d) employer for this agency. They are involved in the daily management of the Pre Trail Services Department from payroll verification to supervising and therefore are "acting directly or indirectly in the interest of an employer in relation to an employee." (See exhibits B-2)

MODO: The San Antonio District Office is responsible for this geographic area. Employer is a MUER, case was associated. (See exhibit D-1)

History: Bexar County has been subject to numerous FLSA and FMLA investigations

Case ID	Trade Name	Date Registered
1762414	Bexar County Sheriff's Office	06/03/2015
1218824	Bexar County Clerk's Office (Court House)	06/12/2002
39548	Bexar County Adult Probation	03/14/1994
76903	Bexar County Sheriff Dept.	01/10/1995

179609	Bexar County Sheriff's	01/07/1993
179736	Bexar County Sheriff's	03/01/1993
180420	Bexar County Elections	08/17/1993
219565	Bexar County Sheriff's	10/01/1993
282854	Bexar County Elections Dept	04/04/1996
342681	Bexar County Elections Dept	11/26/1996
343181	Bexar County Juvenile Center	07/22/1997
343194	Bexar County Sheriff's Office	07/31/1997
399049	Bexar County, Justice Of Peace	01/15/1998
399124	Bexar County--Justice Of Peace	02/11/1998
418903	Bexar County Sheriff's Office	09/25/1998
1170128	Drug Alcohol Probation Violators Facility	10/04/2001
1183003	Bexar County Sheriffs Office	12/14/2001
1307574	Bexar County District Attorney's Office	09/02/2003
1310819	Bexar County Sheriff's Office	09/16/2003
1320703	Bexar County Sheriff's Office	10/30/2003
1357184	Bexar County Purchasing Department	05/06/2004
1359334	Bexar County District Attorney Office	05/18/2004
1360883	Bexar County Forensic Science Department	05/25/2004
1400146	Bexar County Sheriff's Department	03/22/2005
1427839	Bexar County of, Collections Office	12/05/2005
1458337	Bexar County Sheriff Department	10/04/2006
1480904	Bexar County Sheriff's Office	05/21/2007
1491019	Bexar County District Clerk's Office	08/29/2007
1495693	Bexar County Community & Development Programs	10/22/2007
1495696	Bexar County Sheriff's Office	10/22/2007

1505612	Bexar County Sheriff's Office	02/13/2008
1510071	Bexar County Sheriff Office	04/01/2008
1526143	Bexar County Sheriff's Office	09/23/2008
1552523	Bexar County - Juvenile Probation Dept.	07/16/2009
1657335	Bexar County Adult Probation	05/21/2012
1667127	Bexar County Court (Seven)	08/27/2012
1693604	Bexar County Court Six	05/06/2013
1711902	Bexar County ESD #5	11/15/2013
1719878	Bexar County Juvenile Probation	02/12/2014

Employee Eligibility

(b) (6), (b) (7)(C) has been a full time employee for the firm (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) worked more than 1250 hours in the 12 months preceding (b) (6), (b) (7)(C) request for leave. (b) (6), (b) (7)(C) eligibility was not disputed. (See exhibit B-2 & D-5a)

Qualifying Event/Serious Health Condition

(b) (6), (b) (7)(C) qualifying event per §825.112 (a)(1). (b) (6), (b) (7)(C) gave birth (b) (6), (b) (7)(C). The firm does not deny the qualifying reason; they do not question the validity of the certification. (See exhibit B-2 & D-5a).

Employee Notification

(b) (6), (b) (7)(C) notified the employer of (b) (6), (b) (7)(C) need for leave and followed up with a certification from (b) (6), (b) (7)(C) health care provider as requested.

Status of Compliance

Subpart B—Employee Leave Entitlements Under the Family and Medical Leave Act §825.210 Employee payment of group health benefit premiums.

No violations found however, a narrative report was completed to address (b) (7)(E). Although WHI (b) (6), (b) (7)(C) (b) (7)(E) (b) (6), (b) (7)(C) was given the wrong information, (b) (6), (b) (7)(C) health plan benefits continue to be maintained by (b) (6), (b) (7)(C) employer. (See exhibit B-1)

Disposition

A final conference was held via telephone on 2/07/2017 present were Attorney Jacquelyn M. Christilles representing Bexar County and WHI (b) (6), (b) (7)(C) representing the Department of Labor Wage and Hour Division. The investigator explained coverage.

Note: Employer was informed that this investigation was limited.

WHI (b) (6), (b) (7)(C) went over the FMLA regulations with employer. WHI (b) (6), (b) (7)(C) informed employer that although there were no findings, it was clear that (b) (6), (b) (7)(C) was given the wrong information. However, although the wrong information was provided no violation occurred because the employee's health benefits were never interrupted.

Employer stated that the Bexar County FMLA Policy clearly states that an employee on a FMLA status and on leave without pay will continue to be responsible only for their medical premiums and that Bexar County will continue to cover the employer's part. **(See exhibit D-7).**

Attorney Jacquelyn M. Christilles stated that the issue occurred because one employee misquoted the information.

On 02/07/2017 (b) (6), (b) (7)(C) was notified of the investigation findings via telephone.

Publications provided and discussed: HRG, FS#14 Coverage, FS#16 Deductions, FS #21 Recordkeeping Requirements, FS#22 Hours Worked, FS #23 Overtime, FS #28 FMLA, FS#43 CL non ag, FS#44 Visit to ER, FS #73 Nursing Mothers, FS#77A Prohibiting Retaliation, & DOL Website

Recommendations: Administrative close (b) (7)(E)

(b) (6), (b) (7)(C)

Wage & Hour Investigator

Feb 13, 2017

WHISARD Compliance Action Report

U.S. Department of Labor Wage and Hour Division

Case ID: 1842254 Originating District: Little Rock AR District Office
Local Filing Number: 2018-225-12819 Investigating District: Little Rock AR District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 12/29/2017
Assignment Date: 12/29/2017

Employer Information

Trade Name: IHOP Legal Name: 1943 HOP LLC
Address: 1161 Old Morrilton Highway EIN: 52-2375388
County: Faulkner
NAICS Code: 722110
Conway, AR72032 No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 10/31/2017 BNPI:
To: 01/18/2018 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: 06/15/2018
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	1	1	\$600.00	\$600.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	1	Unduplicated Employees Agreed:	1
Total Amount BWs Computed:	\$600.00	Total Amount BWs Agreed:	\$600.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

39.75 hrs. EC as ER made \$500,000+ ADV last 3 yrs. (b) (7)(E). No violations found Sec 206, 207 & 212 Viol found Sec 211 ER failed to keep and maintain accurate records as per reg 516.2. Violations found Section 207 (r)(1)(A)(B) Insufficient Break ER ATC & ATP total compensation of 600.00. No LDs applied. ECA signed by ER. Pubs provided to Mr. Martin Gunaca, owner: 516,778,785,578,579,580,541,CL101, EPPA, FMLA&FLSA posters, FSs#73

WHI Signature: _____ Date: 06/08/2018

Reviewed By: _____ Date: _____

IHOP Case ID: 1842254

1943 HOP, LLC

Case ID: 1842254

DBA: IHOP

File No.: 2018-225-12819

1611 Old Morrilton HWY

EIN: 52-2375388

Conway, AR 72032

NARRATIVE REPORT – FLSA

Point of Contact

Ms. Teresa Davis

Human Resources Director

Mr. Ricardo Aguilera

Executive Vice-President

21620 HWY 10

Little Rock, AR 72223

Phone: (501) 367-8113

Email: Teresa@goldencakesinc.com

COVERAGE

Enterprise Coverage

Section 203(s)(1)(A) of the Act has been established on an enterprise basis during the entire investigative period as the firm's Annual Dollar Volume is over \$500,000 for each of the past three years.

There are at least two employees at this location that perform work each workweek with goods which have been moved in interstate commerce. The employees are handling food products and cleaning items such as avocado, grapes, lettuce laundry bags, towels and air fresheners while performing duties required by the employer purchased from KT Produce in Lowell, AR and Cintas Corporation in Conway, AR. Therefore, all employees are covered for the entire investigative period. (See exhibits C-8, C-9)

Individual Coverage

Individual coverage was found applicable for server employees through the limited investigative period. The employees regularly and customarily processed credit card transactions from customers on a regular and recurring basis. (See exhibits B-0 to B-9)

The Annual Dollar Volume (ADV) provided by the firm is as follows: (See exhibits C-1)

2015	(b) (4)
2016	(b) (4)
2016	(b) (4)

Workforce:

At the time of the initial conference the firm had approximately (b) (4) employees, and approximately (b) (4) enterprise employees. The restaurant operates with the following AM/PM employees: (b) (4) servers, (b) (4) cooks, (b) (4) hosts and (b) (4) dishwashers. (See exhibits A-0-1 to A-0-109, B-1 to B-9, D-39 to D-66)

Period of Investigation:

The limited investigative period is from 10/31/2017 to 01/18/2018.

Nature of Business

The subject firm is a full service restaurant that operates 24 hours 7 days a week. (See exhibit C-3)

Business Structure

The firm was incorporated in the State of Arkansas on September 9, 2002. Martin Gunaca is the President and (b) (4) owner. In addition to the subject of this investigation Mr. Gunaca owns eight (8) other locations and Golden Cakes, Inc. (See exhibit C-2)

Section 203(r)

The enterprise has approximately (b) (4) employees and all locations are managed and operated under the umbrella of Golden Cakes, Inc. Mr. Martin Gunaca is (b) (4) owner and President of the following locations (See exhibit C-2):

- 436 HOP, LLC 101 N. University Dr. Little Rock, A R72205
- 1933 HOP, LTD 4225 Warden Rd North Little Rock, AR 72116
- 1944 HOP, LLC 11601 Hermitage Rd Little Rock, AR 72211
- 3067 HOP, LLC 3153 W. Wedington Fayetteville, AR 72704
- 3090 HOP, LLC 3513 E. Race Searcy, AR 72143
- 3121 HOP, LLC 17821 I-30 Benton, AR 72015
- 3260 HOP, LLC 306 W. Commerce St. Benton, AR 72022
- 3318 HOP, LLC 11501 Maumelle Blvd North Little Rock, AR 72113
- Golden Cakes, Inc. 21620 HWY 10 Ste. 200A North Little Rock, AR 72113

Section 203(d) Employer:

Mr. Martin D. Gunaca and Ms. Teresa Davis are the employers as defined in Section 3(d) of the Act. Mr. Gunaca maintains (b) (4) ownership of the enterprise and makes all personnel, financial and administrative decisions concerning this location of the firm. During the investigation, the primary point of contact was Director of Human Resources Ms. Teresa Davis. Ms. Davis makes independent decisions regarding the hiring, firing and changes in status of all personnel. She oversees the human resources and payroll functions for all employees and is responsible for ensuring compliance with state and federal workplace regulations. (See exhibit C-2)

Section 216(b):

Per information received from Ms. Teresa Davis at the time of the initial conference, the subject firm did not have knowledge of any private right action under Section 216(b) of the FLSA during the period of investigation. (See exhibit C-3)

MODO

The headquarters of the firm is located at 21620 HWY 10 Little Rock, AR 72223, which is within the operation area of the Little Rock District Office. The firm operates 8 other restaurants in North Little Rock, Benton, Fayetteville and Searcy. Therefore, Little Rock District Office is the MODO. MODO ID (b) (7)(E)

(See exhibit D-1 to D-5)

Mapping:

The payroll and management of the firm is controlled through Golden Cakes, Inc. The majority of their goods are purchased locally from KT Produce in Lowell, AR and Cintas Corporation in Conway, AR. In addition to the subject of this investigation Golden Cakes manages and operates 8 other locations in the cities of Fayetteville, Little Rock, Benton, North Little Rock and Searcy.

The employer needs to keep and maintain different licenses and permits to operate the restaurant. Some of the licenses are required by the City of Little Rock such as Business License, Mixed Drinks Permit and Alcoholic Beverage Permit, and the Retail Food Establishment Permit from Arkansas State Board of Health. (See exhibits C-8 to C-11)

EXEMPTIONS: Section 213(a)(1) Applicable:

541.101 Executive Exemption – was found applicable to Mr. Martin D. Gunaca. He has (b) (4) ownership of the firm and is engaged in the daily operation of the business. Mr. Gunaca is responsible for all the company operations and for the day to day decisions of the firm. (See exhibit C-2).

541.100 Executive Exemption – was found applicable to (b) (6), (b) (7)(C) guaranteed weekly salary is (b) (6), (b) (7)(C) primary duty is management. (b) (6), (b) (7)(C) supervises around 10 employees. (b) (6), (b) (7)(C) has the authority to hire, fire and train employees, and is in charge of the employees' schedule. (See Exhibit C-5)

No other exemptions were tested for this establishment.

STATUS OF COMPLIANCE

Reason for Investigation:

This limited investigation was initiated (b) (7)(E) (b) (6), (b) (7)(C) (b) (7)(E) the employer failed to allow reasonable amount of break time to express milk as frequently as needed by the nursing mother, and did not provide a place that was shielded from view and free from intrusion from coworkers to express her breast milk. (b) (6), (b) (7)(C) (b) (7)(E)

(b) (7)(E) . (See Exhibits B-1 to B-9)

Prior History:

There is a prior (b) (7)(E) on WHISARD Case ID: 05/16/2001. (b) (7)(E) violation is employer failed to pay minimum wage. No other information is provided.

Section 206 – Minimum Wage:

A review of records and employee interviews revealed no violation of this section in this limited

investigation. (See exhibits A-0-1 to A-0-109)

Section 207 – Overtime:

A review of records and employee interviews revealed no violations of this section in this limited investigation. (b) (6), (b) (7)(C) was paid time and a half of (b) (6), (b) (7)(C) regular rate of pay for all hours worked over 40 in a workweek. (See exhibits A-0-1 to A-0-109)

Section 207(r):

Violations of this section were found. Employees who are not exempt from Section 7 are entitled to breaks and space to express milk. (b) (6), (b) (7)(C) gave birth to a child (b) (6), (b) (7)(C). The employee was covered by the protections provided for under Section 207(r) of the Fair Labor Standards Act. (See Exhibits B-8)

Insufficient Break Time 7(r)(1)(A):

From the time (b) (6), (b) (7)(C) returned to work (b) (6), (b) (7)(C) was not able to take breaks to express milk as needed. (b) (6), (b) (7)(C) informed the Manager that (b) (6), (b) (7)(C) would need 15 minutes, once every 2 hours, to express milk. For the period from 12/12/2017 to 01/01/2018 the (b) (6), (b) (7)(C) had two opportunities to express milk. On 01/01/2018 (b) (6), (b) (7)(C) requested (b) (6), (b) (7)(C) break to express milk and manager (b) (6), (b) (7)(C) informed (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) was unable to help (b) (6), (b) (7)(C). The storage was full of boxes and (b) (6), (b) (7)(C) did not have the room available to expressing milk. (b) (6), (b) (7)(C) spent the majority of (b) (6), (b) (7)(C) time working (b) (6), (b) (7)(C) section as a server alone and (b) (6), (b) (7)(C) was told that there was no coverage from co-workers to provide (b) (6), (b) (7)(C) an opportunity to take a break, especially during the weekends. This resulted in (b) (6), (b) (7)(C) decision to stop expressing breast milk, entirely. There is no evidence to substantiate that management made an effort to accommodate (b) (6), (b) (7)(C) breaks as needed. (See exhibits B-1 to B-9)

Insufficient Space Time 7(r)(1)(B):

From the time (b) (6), (b) (7)(C) returned to work (b) (6), (b) (7)(C) was never provided a space in which to express milk that was shielded from view and free from intrusion by co-workers. (b) (6), (b) (7)(C) was required to express milk in the dry storage in where a rack of bread was used

as a barrier; however the area was accessible to all employees not giving (b) (6), (b) (7)(C) the required privacy. As information revealed from two interviewers (b) (6), (b) (7)(C) had been intruded on while expressing milk on two occasions by other employees.

WHI inspected the space and found it did not meet the privacy requirements under section 7(r). The area is frequented by cooks and servers since it holds goods used in the kitchen to prepare food and items such as salt, pepper and napkins used by servers to refill tables. (See exhibits B-1 to B-9)

Undue hardship under 7(r)(3) – was found not applicable. The employer has 50 or more employees within a 75 mile radius and the employer did not demonstrate that complying with the FLSA 7(r) would cause “significant difficulty or expense when considered in relation to the size, financial resources, nature, or structure of the employer's business”. (See exhibits A-0-1 to A-0-109)

Back Wages:

(b) (7)(E)

(b) (6), (b) (7)(C) decided to stop expressing milk on 01/01/2018. An infant takes an average of 24-30 ounces every 24 hours. One formula powder can of 21.1 oz. makes a total of 151 fl. oz. The infant takes an average of 168 fl. oz. per week.

(b) (7)(E)

(b) (7)(E)

From the second month forward (b) (6), (b) (7)(C) was provided by (b) (6), (b) (7)(C) a total of 16 cans and formula was changed from Enfamil to Similac. The employee's (b) (6), (b) (7)(C) was using 18 cans per month. An average price has been analyzed for a total of 2 cans per month in a 5 months period.

Similac Infant 30.8 oz.

(b) (7)(E)

(b) (7)(E)

\$331.67 (Estimated cost for 6 months)

(b) (7)(E)

Retaliation 15(a)(3):

A telephone call was held with (b) (6), (b) (7)(C) on May 10, 2018. (b) (6), (b) (7)(C) informed that is not working anymore with the employer. Based on (b) (6), (b) (7)(C) statement (b) (6), (b) (7)(C) left of (b) (6), (b) (7)(C) own will and there is no indication of possible retaliation by the employer.

Section 211 – Recordkeeping:

A record keeping violation resulted due to records provided did not show time of the day as required under CFR 516.2(a)(5). (See exhibits A-0-1 to A-0-109)

Section 12 – Child Labor:

No child labor violations were found for the employer. The employer has one employee under the age of 18. However, the employee's occupation is hostess. According to the employee's interviews the minor did not perform hazardous occupations. (See Exhibit B-1 to B-9)

FMLA

The subject establishment employs more than 50 employees in 20 workweeks in the preceding or calendar year. Therefore the FMLA is applicable. (See exhibits D-22 to D-38)

DISPOSITION

On June 8, 2018, Wage Hour Investigator (WHI) (b) (6), (b) (7)(C) held a final conference at the main office of the firm 21620 HWY 10 Little Rock, AR 72223, representing the firm was Mr. Martin Gunaca, owner and President, Sandy Streett, Vice-President of Personnel and Teresa Davis, Human Resources Director.

This WHI explained enterprise coverage, period of investigation and the applicability of Fair Labor Standard Act: Exemptions, Sections 206, 207, 211 and 212.

WHI, (b) (6), (b) (7)(C) explained that according to CFR Title 29, part 516.2 the firm is required to accurately record time of the day each workweek for all employees subject to the overtime and minimum wage provisions of the FLSA.

WHI (b) (6), (b) (7)(C) discussed the provisions under Section 7(r)(1)(A)(B) and how they are applicable in this limited investigation.

Mr. Gunaca stated that they never denied the employee to take breaks and that (b) (6), (b) (7)(C) did not

inform to the managers that she was uncomfortable in the storage room. WHI, (b) (6), (b) (7)(C) explained in detail that based on Sections 7(r)(1)(A)(B) the employer is required to provide adequate space completely shielded from view and free from intrusion. He was explained that the interviews revealed that either, adequate space and reasonable breaks were not given to the employee. WHI, (b) (6), (b) (7)(C) explained to the employer that a bread rack was not sufficient and the employees were able to enter the room while the employee was expressing milk. Ms. Davis and Mr. Gunaca explained that they were told a different story from the managers but that they are agreed to comply in the future and to pay the amount of \$600.00 to (b) (6), (b) (7)(C) to cover the damages. Mr. Streett explained that the reason of the violations was due to miscommunication between the employee and the managers and they did not know about the situation since they were told something different. Mr. Gunaca informed that they are taking this issue seriously and as a remedy they will be displaying posters with Fact Sheet 73 in the break room in each of the locations as well they will be preparing training materials and providing the training to all of the managers and assistant managers for all of their locations as recommended in the Enhancement Compliance Agreement. Ms. Davis informed that as soon as they complete the trainings she will be providing a certified letter on or before September 1, 2018.

Retaliation and Liquidated Damages:

During the initial conference, this WHI discussed with Ms. Teresa Davis and Mr. Ricardo Aguilera that retaliation is prohibited and explained that in the event of violations of minimum wage and overtime, liquidated damages will apply in equal amount of back wages due. During the final conference, this WHI discussed with Mr. Gunaca, Ms. Davis and Ms. Streett that retaliation is prohibited.

Civil Money Penalties:

This WHI discussed with Ms. Teresa Davis and Mr. Ricardo Aguilera during the initial conference that current and future violations of the FLSA could result in the assessment of Civil Money Penalties.

Recommendation:

(b) (7)(E) administratively closed
(b) (7)(E)

(b) (6), (b) (7)(C) Notification:

On June 8, 2018 this WHI (b) (6), (b) (7)(C) contacted (b) (6), (b) (7)(C) and informed about the results of the case.

Publications Provided:

Handy Reference Guide (HRG), Fact Sheet #44 and Fact Sheet 77A were provided via email. On January 18, 2018, during the initial conference, WHI Carmen E. Reyes provided to Ms. Teresa Davis and Mr. Ricardo Aguilera the following publications: Fact Sheets # 73, 29 CFR 516, 541, 578, 579, 580, 785, 778, 825, CL 101, FLSA, EPPA & FMLA posters.

(b) (6), (b) (7)(C)

Wage Hour Investigator

06/08//2018

WHISARD Compliance Action Report

U.S. Department of Labor Wage and Hour Division

Case ID: 1861078 Originating District: Austin TX District Office
Local Filing Number: 2018-488-01509 Investigating District: Austin TX District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 08/08/2018
Assignment Date: 08/08/2018

Employer Information

Trade Name: The Buttery Company
Address: 201 West Mian Street

Llano, TX 78643

Legal Name: Buttery Company, LLP
EIN: 74-1386415
County: Llano
NAICS Code: 423710
No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 04/12/2018 BNPI:
To: 08/10/2018 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

Cov. 3(s)(1)(A). ^(b) (b) (7)(E) violation of Sec. 7(r) FLSANM, ER not providing space for nursing mother to express milk for newborn. (b) (7)(E). ER found also not paying for all normally compensable breaks. ER agreed to and did arrange for an appropriate space to express milk during IC. A review of time and pay records did not find any MW or OT BWs. OT not worked and MW paid. FC w/Brenda Durst on 9/6/2018. FC assured. No further action. HRG, FS-44, 73 and 77a provided.

WHI Signature: _____ Date: 09/10/2018

Reviewed By: _____ Date: _____

Case ID: 1861078
Buttery Company, LLP
dba Buttery Company
201 W. Main Street
Llano, TX 78643
(325) 247-4141
EIN: 74-1386415

FLSANM NARRATIVE

COVERAGE:

The Buttery Company, LLP is a distributor of plumbing, electrical, hardware, lumber and ranching products. The company has been in business since 1892. The principals of the company are: John Buttery (CEO), Brenda Durst (Human Resources Executive), William Buttery and Jean Wallace Buttery. Each of the listed principals retains a 25% ownership. C-1

John Buttery, CEO indicated that the company has had an annual ADV exceeding (b) (4) in each of the years 2017, 2016 and 2015. The company employs approximately (b) (4) personnel. The employees regularly handle goods manufactured for commerce. One of the products sold by Buttery is Rust-Oleum Paint. The paint product is manufactured for interstate commerce from plants located in Illinois, Wisconsin, Maryland and West Virginia.

Enterprise coverage asserted per Sec. 3(s)(1(a) of the Act.

This investigation was limited to the Nursing Mothers provision of the Act and covered the period of 4/12/2018 through 8/10/2018.

MODO record is not required as the firm is not a multi-unit enterprise.

3(d) Employer: Brenda Durst, Owner and Human Resource was identified as the 3(d) employer. She handles all of the hiring and firing of employees and sets the rates of pay and duty assignments.

EXEMPTIONS:

Two exemptions may be applicable under this provision:

Individuals found to be exempt from Sec. 7 of the Act are exempt from the protections of Sec. 7(r) of the Act – Break Time for Nursing Mothers.

(b) (6), (b) (7)(C) in this case was not exempt nor was (b) (6) claimed to have been exempt under Sec. 7.

Sec. 7(r)(3) provides an exemption for those employers with less than 50 employees; an employer that employs less than 50 employees shall not be subject to the requirements of this subsection, if such requirements would impose an undue hardship by causing the employer significant difficulty or expense when considered in relation to the size, financial resources, nature, or structure of the employer's business.

Sec. 7(r)(3) is not applicable to this employer; the company employs approximately (b) (4) personnel.

No other exemptions claimed or found to have been applicable to this limited investigation..

STATUS OF COMPLIANCE:

This investigation was initiated based on (b) (7)(E) (b) (6), (b) (7)(C) from maternity leave. (b) (6), (b) (7)(C) (b) (7)(E) after returning to work (b) (6), (b) (7)(C) requested a space that (b) (6), (b) (7)(C) could use to express milk. (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) supervisor identified a storage space that could be cleaned up and used. The decision was allegedly overruled by the owner of the company.

(b) (6), (b) (7)(C) began going home during (b) (6), (b) (7)(C) employer paid morning and afternoon breaks and during the unpaid lunch breaks. (b) (6), (b) (7)(C) (b) (7)(E) these trips to (b) (6), (b) (7)(C) residence took up to an hour each time and (b) (6), (b) (7)(C) was deducted up to 3 hours per day. (b) (6), (b) (7)(C) indicated that (b) (6), (b) (7)(C) used the time at home to express milk and nurse (b) (6), (b) (7)(C) child up to 4 times per day. A-1 & A-2

(b) (7)(E) the employer failed to provide an appropriate location to express milk (b) (7)(E)

History: No investigative history found for this employer.

Section 6 - Minimum Wage

A review of the time and pay records revealed that the employee (b) (6), (b) (7)(C) was traveling to (b) (6), (b) (7)(C) home to express milk. The employee clocked-out each time. The records showed that (b) (6), (b) (7)(C) would take as few as 14-17 minutes and as much as 70 plus minutes to go home and express milk.

(b) (6), (b) (7)(C) lived 1 to 2 miles from the business. In those cases where (b) (6), (b) (7)(C) took up to 20 minutes, the time was treated as a break and (b) (6), (b) (7)(C) was compensated the entire period. On those occasions where the employee was clocked out for more than 20 minutes, (b) (6), (b) (7)(C) was not compensated for the normal break time.

The employer agreed to compensate (b) (6), (b) (7)(C) for the break time normally paid and an additional ten minutes for each break, allowing for the time spent driving to her home and back.

The employer's practice resulted in potential minimum wage violations. The amount of time varied from day-to-day. The records revealed the unpaid time to be from 14 to 50 minutes per day.

(b) (6), (b) (7)(C) regular rate was (b) (6), (b) (7)(C) per hour. An average of 2-3 hours per week was found due in reconstructing the hours worked and/or unpaid time due, based on the unpaid breaks and drive time.

During the period that (b) (6), (b) (7)(C) was nursing, (b) (6), (b) (7)(C) was working 20-32 hours per week. The analysis revealed that in all work weeks affected by the practice, (b) (6), (b) (7)(C) was paid in compliance. (b) (6), (b) (7)(C) overall earnings, for each workweek exceeded minimum wage. A-1 & A-2

Section 7 - Overtime

No violations.

Section 11 – Record Keeping

No violations.

Section 12 - Child Labor

No minors were employed.

DISPOSITION:

On 8/10/2018, WHI (b) (6), (b) (7)(C) traveled to the business and met with the owner, John Buttery. Mr. Buttery acknowledged that a location had been identified for (b) (6), (b) (7)(C) use to express milk, though he had denied its use for that purpose because it was too dirty and would've been difficult to clean-up. He stated that the issue was not raised again and he assumed that it had been handled.

Mr. Buttery said that he was aware of the Nursing Mother provision in the FLSA though was unaware that (b) (6), (b) (7)(C) had not been accommodated. He stated that he had not heard anything else about (b) (6), (b) (7)(C) need for time and space and he had assumed that she had been satisfied.

Mr. Buttery instructed (b) (6), (b) (7)(C), Warehouse Supervisor, to show WHI (b) (6), (b) (7)(C) a space that (b) (6), (b) (7)(C) had identified as available for the use of (b) (6), (b) (7)(C). The space had been previously used as a conference room though was no longer needed due to new construction.

The space measured approximately 10" x 14" with a window AC unit. The room was lockable from the inside and outside. There was a window between the room and another unused room, though it was easily covered from the inside.

On 8/10/2018, WHI (b) (6), (b) (7)(C) drove to the address of the complainant, (b) (6), (b) (7)(C) residence is located approximately 2 miles from the business. The purpose of the trip was to leave a note for (b) (6), (b) (7)(C) to call

WHI (b) (6), (b) (7)(C)

An analysis was conducted of the hours worked, break times and time clock punches for (b) (6), (b) (7)(C). During some the breaks (b) (6), (b) (7)(C) took as little as 14 – 17 minutes, while for other breaks (b) (6), (b) (7)(C) took as much as 60 – 70 minutes.

The employer agreed to pay (b) (6), (b) (7)(C) for all of the uncompensated breaks (15 minutes), morning and afternoon, plus an additional 10 minutes for each break to compensate for (b) (6), (b) (7)(C) having to travel to and (b) (6), (b) (7)(C) home. Back wages were not assessed. Though after the hours worked were reconstructed no violation of Sec. 6 or Sec. 7 found or assessed. A-1 & A-2

A final conference was held by phone with Brenda Durst on 9/7/2018. Ms. Durst explained that they had just simply made a mistake by not providing the required break area for (b) (6), (b) (7)(C) to express milk. The mistake was likely caused because of a lack of communication and they intended to fully comply in the future. Ms. Durst was advised that to comply in the future the firm must:

- 1) Provide a reasonable break time for an employee to express breast milk for (b) (6), (b) (7)(C) nursing child for 1 year after the child's birth each time such employee has a need to express milk.
- 2) Provide a place, other than a bathroom, that is shielded from view and is from intrusion from coworkers and the public, which may be used by an employee to express breast milk.
- 3) Where compensated breaks are already provided to other employees, an employee who uses that break time to express milk must be compensated in the same way.

Ms. Durst agreed to fully comply in the future with all applicable provisions of the FLSA requiring break time for Nursing Mothers.

(b) (6), (b) (7)(C) was advised of the results of this investigation on 9/7/2018. Attempts to communicate with (b) (6), (b) (7)(C) on 8/6/2018 and 8/13/2018 were not successful, return calls were not received by (b) (6), (b) (7)(C).
B-1

Publications provided and discussed: HRG, FS-44, FS-73 and FS-77a.

Recommend this case be administratively concluded with no further actions (b) (7)(E)

(b) (6), (b) (7)(C)

Wage & Hour Investigator

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1592438 Originating District: Sacramento District Office
Local Filing Number: 2010-302-04135 Investigating District: Sacramento District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 08/13/2010
Assignment Date: 08/13/2010

Employer Information

Trade Name: Cache Creek Casino Resort
Address: 14466 Hwy 16

Brooks, CA95606

Legal Name: Cache Creek Casino Resort
EIN: 68-0307932
County: Yolo
NAICS Code: 721120
No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 06/16/2010 BNPI:
To: 10/25/2010 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
No Violation found for this act / Agree to Comply					\$0.00	\$0.00	
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

FLSA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
No Violation found for this act / Not Applicable					\$0.00	\$0.00	
FLSA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
Failure to provide reasonable break time / Agree to Comply	1	0	\$0.00	\$0.00	\$0.00	\$0.00	
Failure to provide adequate space / Agree to Comply	1	0	\$0.00	\$0.00	\$0.00	\$0.00	
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	
Total Violations Under FLSNM :	2						\$0.00

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

Sec 7(r) - Nursing Mothers PPACA - limited to ee review. FC w/ atty J. Peterson. Casino Resort is owned & operated by Wintun Tribe. Claimed sovren nation, however were provided FLSA retail definitions. Cvrge established per WHI. Er violated access requirement for ee by limiting and controlling availability of single lactation stall for site employing (b) (4) ees. Single stall part of Changing/locker rm w/ toilets. Unable to conclude if bathroom per law defin. however Er ATR & build new facility.

WHISARD Compliance Action Report

WHI Signature: _____ Date: 11/10/2010

Reviewed By: _____ Date: _____

Cache Creek Resort Casino

14455 Highway 16
Brooks, CA 95606
Tel: 800 452-8181
Fax: 530 796-4566
EIN: 68-0307932
Case Filing #: 2010-302-04135
Case ID: # 1592438
<http://www.cachecreek.com/about-us/>

FLSA NARRATIVE

ASSIGNMENT

This case was initiated (b) (7)(E) (b) (6), (b) (7)(C) (b) (7)(E)
(b) (6), (b) (7)(C) employer was violating the Patient Protection and Affordable
Care Act amendments to the FLSA.

(b) (6), (b) (7)(C), the requirements of the employer to provide nursing mothers with reasonable break time, in a space other than a bathroom, to express their breast milk was not met by the restrictions of use and location of the company's single lactation stall in the employee locker room.

COVERAGE

Resort Casino is owned and operated on tribal land (Rumsey Indian Rancheria) by the Rumsey Band of Wintun Indians. The beginning bingo hall of 1985 is now grown to include a casino, 200 room hotel, 18-hole golf course, theatre, restaurants and spa. (Ex. C-4)

All employees of the retail facilities are covered under enterprise 3(s)1 coverage. Tribal Officials have stipulated through attorney that annual sales done by retail facilities including casino, hotel, restaurant and mini-mart exceed 500K for yrs 2008 and 2009. (Ex. C-1) Employees of enterprise handle goods that have moved in IC such as York peppermint patties from Mexico and Lipton brand iced tea from New York. (Ex. C-2). Resort currently employs (b) (4) workers.

Employee Eligibility:

(b) (6), (b) (7)(C) meets the definition of an eligible employee per 7(r); (b) (6), (b) (7)(C) is not exempt from Sec. 7 provisions of the FLSA, and (b) (6), (b) (7)(C) is under age 1.

(b) (6), (b) (7)(C) had returned to work at (b) (6), (b) (7)(C) former position as Revenue Auditor I with the Casino, (b) (6), (b) (7)(C) is paid hourly at (b) (6), (b) (7)(C) (Exs. B-1, D-6, hourly pay records, D-7, description of duties)

Period and scope of review:

Review is limited to FLSA Sec 7(r) (b) (6), (b) (7)(C) only and begins with ee's return-to-work date (b) (6), (b) (7)(C)

MODO: Sacramento DO is the MODO

STATUS OF COMPLIANCE

Prior history:

Two prior CAs

1991 – FLSA – No data is shown in WSRD system to explain prior issues

2004 – FLSA – (b) (7)(E) – Ee (b) (7)(E) MW viol for non-receipt of last paycheck, however Casino provided proof of payment and ee's (b) (7)(E)

FLSA Section 7(r) –Break Time for Nursing Mothers

Site visit by WHI: 8/16/2010:

WHI met with VP of Human Resources, Ron Vargas and Employee Relations Mngr Tonya Bradley. Firm allowed accompanied view of lactation stall inside the bathroom and tour of wardrobe and talk with key holder to lactation stall. Firm did not allow confidential interviews, pictures or records check due to sovereign nation claim. Firm has no written policy for ees taking lactation breaks or using facilities for such.

7 (r) A

“Reasonable break time for an employee to express breast milk for her nursing child for 1 year after the child's birth each time such employee has need to express the milk”

Reasonable breaks, Time restrictions, Access:

(b) (6), (b) (7)(C) had been requesting and using break time approximately two times per day, during (b) (6), (b) (7)(C) full-time shift 7:30 am to 3pm. Neither company, nor direct supervisor has objected to breaks. All nursing mother employees were allowed to use a designated changing stall within the woman's locker-room/bathroom combination area set-aside for expressing milk. (See Ex. D- 1 for layout)

This stall was padlocked, and the key was held by the department down the corridor, called “wardrobe”, also responsible for uniforms, and other job- related day-use items. There was a checkout monitor for the key, and nursing mothers were encouraged to limit time for 30 minutes maximum as the next mother might be waiting her turn.

The stall is located downstairs from ee's office. When time comes to express milk,

- 1) (b) (6), (b) (7)(C) arrives at wardrobe check-in window,
- 2) key may or may not be available (due to another ee use) – potential wait time
- 3) Must unload pump equip from lockers
- 4) Stall wipe-down from prior use
- 5) Milk expressing and storage marking
- 6) Clean equip and lock-up
- 7) Key return

Combined, the restrictions to amount of time, and availability of singular, locked area used for lactation stall, provoked violation of the statute. (b) (6), (b) (7)(C) stated that time needed to actually express milk is 30-35 minutes average, however the company's policy via "wardrobe" department of only allowing the ee to have the key to the lactation stall for total of 30 minute to accomplish all needed in the process caused violation of this "reasonable" provision of law, as it unnecessarily cuts into (b) (6), (b) (7)(C) available milk expression time.

The checkout monitor on duty during site visit, Diana Abrahmson, verified the company's position on time limits. (Documented by Ee interview Ex. B-1, WHI tour visit on 8/16/10)

7 (r) B

"place, other than a bathroom, that is shielded from view and free from intrusion from co-workers and the public, which may be used by an employee to express breast milk"

The lactation stall is a padlocked changing stall within a combination bathroom/changing room/locker room area. This facility was toured during the site visit on 8/16/2010 by WHI (b) (6), (b) (7)(C) (See Ex. D- 1 for layout)

Only one key existed and it was "checked out" by the "wardrobe person" who checks out the hundreds of dry-cleaned uniforms daily as well. This busy central uniform area is located across the hall from bathroom/changing/locker room, and there was a wait to request key. Per discussion with wardrobe ee Diana Abrahmson on day of visit, if stall in use, one must wait or come back, hence need for limit of 30 minutes, and log recordings of in-out times.

There is an electrical outlet, and small wall shelf. No storage. The worker(s) bring their own pumps from home each day and put them in the day-use only lockers. There is a small fridge on the floor where the expressed milk can be kept until end of day.

There is no public access to this facility.

Place other than a Bathroom:

(b) (7)(E)

At this time, Wage Hour is unable to assert that the provided lactation stall is a facility that would be defined as a bathroom for purposes of the statute.

Section 12 – CL: There were no minors under the age of 18 years old observed working for this company during site inspection 8/16/2010. VP of Human Resources Ron Vargas stated that it was against company policy for minors to work at the casino and that they did not hire anyone under age 18.

DISPOSITION

The Rumsey Band Tribal Officials had designated their business representation to attorney Jill C. Peterson of Korshak, Kracoff, Kong & Sugano, LLP in Sacramento, CA.

Cache Creek Casino Resort, as a business completely owned by the tribe, believed that the Fair Labor Standards Act provisions did not apply to their employees under sovereign nation status, and communicated their position to Wage Hour, in resisting the initial visit by Wage Hour on 8/16/2010, and subsequent e-mails.

In the Telecon of 8/18/2010, Ms. Peterson was advised by WHI (b) (6), (b) (7)(C) of the Wage Hour position that retail operations were subject to the FLSA. The Fact Sheet #73 – FLSA – Nursing Mothers break time amendments was discussed and the DOL findings that the employee (b) (6), (b) (7)(C) was being limited in (b) (6), (b) (7)(C) access to a provided lactation “space” in our telecon of 8/18/2010.

On 9/2/2010, the company had begun the following changes to come into compliance:

SHORT-TERM changes made per Atty, & confirmed by complainant (b) (6), (b) (7)(C)

Access

- 1) Additional changing stall within locker room has been converted into lactation facility
- this includes added electrical outlet & fridge
- 2) Nursing mothers have been given personal keys to padlocks & told can keep for one year.

LONG-TERM:

The company has begun construction of a lactation room that is self-contained and will have a different entry from the hall. (See Exs. D-14 for floor plan and description) The footprint is for two women. This will eliminate the opening to an adjoining toilet area, as well as maintain more privacy for the mothers. The estimate for finish of this project is no later than mid-Dec. 2010.

(b) (6), (b) (7)(C), has been advised of the Wage Hour findings via telecom on 10/18/10.

Recommendation: It is recommended that this case be administratively closed and no further action be taken.

Publications Provided: FS-22, HRG, FS on Retail Definitions, FS –CL – Non-Ag , FS #73,

(b) (6), (b) (7)(C)

Wage & Hour Investigator
Nov. 10, 2010

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1628922 Originating District: Los Angeles District Office
Local Filing Number: 2011-231-05977 Investigating District: Los Angeles District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 08/26/2011
Assignment Date: 08/30/2011

Employer Information

Trade Name: LA County Department of Pulic Social Legal Name: County of Los Angeles
Address: 1819 W. 120th St EIN: EIN Missing
County: Los Angeles
NAICS Code: 09890
No. Of Employees: 430
Los Angeles, CA90047

Investigation Information

Period Investigated From: 03/23/2010 BNPI:
To: 09/21/2011 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	2	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

total 11.5 hrs; (b) (7)(E) the nursing mothers were not provided an adequate space that is shielded from view and free from intrusion from public and coworkers to express breast milk. Upon IC, the situation is already remedied and accommodation was made for 3 nursing mothers. They were provided with separate space where it is shielded from the view of public and coworkers, and the time for expressing milk was compensated. No further action recommended. Publication provided; HRG Fact Sheet #73

WHI Signature: _____ Date: 09/22/2011

Reviewed By: _____ Date: _____

Los Angeles Department of Public Social Services CASE ID #1628922
1819 W. 120th Street Local ID# 2011-231-05977
Los Angeles, CA 90047 EIN: N/A

Phone: 323-420-2918

Fax: 323-241-6675

-

FLSAN NARRATIVE REPORT

CASE ASSIGNMENT INFORMATION:

This case is initiated as a result of (b) (7)(E) (b) (6), (b) (7)(C) (b) (7)(E) (b) (6) -
employer failed to accommodate the nursing mother by providing the adequate area that are shielded from view and
free from intrusion from coworker and public. The current investigation was handled as a limited investigation
which examined the scope of compliance under Sec 7 the provision applicable to nursing mothers.

COVERAGE:

Nature of Business & Section 3(d) employer:

The employer is Los Angeles a county government and it is covered under FLSA under Sec.3 (1)(c) of the Act.
The subject employer is Los Angeles County Public Social Services and it handles the application and eligibility
review on food stamps, medical, medi-care, and welfare.

MODO: LADO

Period of Investigation: 3/23/2010-9/21/2011

Patient Protection and Affordable care Act which amended the FLSA Sec.7 which provides
the provision for nursing mothers were in effect
since 3/23/2010. Therefore the period of investigation started from 8/23/2010.

Branch Establishments: n/a

Number of Employees: 430

Joint Review Conference:n/a

EXEMPTIONS: Not reviewed during this investigation.

STATUS OF COMPLIANCE:

Prior History: Case ID 1038555. This was a (b) (7)(E) done in 1999 regarding the ER/EE relationship and ER resolved the matter by paying \$151. (See Exhibit E-1,2)

Section 06: *Minimum Wage*

Not reviewed during current investigation.

Section 07:

As a result of PPACA amended to FLSA effective to 3/23/2010, it is required that employers to provide a nursing mother reasonable break time to express breast milk after the birth of (b) (6) child and provide a place for an employee to express breast milk shielded from the view of the public and coworkers. The employer complied with Section 7 (r) (1)(A) by providing a reasonable break time for an employee to express the break milk for nursing mothers. The interviews of current employees who were currently expressing milk for child under 1 year indicated that employer compensated for the time they spent expressing the breast milk and there was no limit as to the duration of break and frequency of the break. (See Exhibit B-1, 2)

However, the employer failed to comply with the Section 7 (r) (1)(B). The employer initially designated the storage room in the building to be used for nursing mothers to express their milk. The incident occurred on 8/24/2011 when (b) (6), (b) (7)(C) was expressing milk and her coworker, (b) (6), (b) (7)(C), walked into the room. (b) (6), (b) (7)(C) immediately reported the incident to (b) (6), immediate supervisor, (b) (6), (b) (7)(C) response was that 'it could happen to anyone' and (b) (6), (b) (7)(C) was not convinced that the situation would be remedied. (b) (6), (b) (7)(E) and also forwarded (b) (6), concern to Deputy Administrator, Julia Johnson, following day. Ms. Johnson apologized and took immediate action to remedy the situation by providing a separate room. WHI (b) (6) toured the space provided for nursing mother on 9/21/2011 during IC. It is a vacant office designated for two nursing mothers in the department. The key to the room is kept at the secretary's desk. The nursing mothers would go to the secretary, notify (b) (6) of their use of the room, put out the sign outside of the space saying 'Do not disturb. In use.' And the office can be securely locked from inside. The room is shielded from the public view and not accessible from outside when locked from inside.

I interviewed two nursing mothers that were currently utilizing facility. (b) (6), (b) (7)(C) has (b) (6), old child and (b) (6), (b) (7)(C) also has (b) (6), old child. The third nursing mother, (b) (6), (b) (7)(C), who was previously sharing the facility was transferred to different branch, and (b) (6), was not available for an interview. It appears that the situation was remedied voluntarily by employer's taking immediate action upon hearing complaints from nursing mothers.

DISPOSITION:

Final Conference:

The final conference was held on 9/21/2011 with the district director, Bari Banks. I explained the provision under the law and purpose of our investigation. She advised me that the (b) (7)(E) incident report was brought up to her attention about a month ago. The room provided to nursing mothers at the time was supply room and a staff assistant accidentally opened the door while one of the nursing mothers was using the room.

Since then, Ms. Banks instructed to designate a vacant room for nursing mothers. The key to the room is available to staff assistant and building engineers, but they were admonished on entering the room with caution. WHI (b) (6) visited the room, and it has the lock, and has the sign with bright color says 'do not disturb: In use' and the nursing mothers should get the key to the room from the secretary, and since then there was no complaints or repeated incidents. WHI (b) (6) toured the room, and it has the lock, closed from the public view, and it had the sign that can be posted outside when someone was using the sign. I spoke with two nursing mothers that are still employed at the facility, and they both confirmed the compliance.

WHI (b) (6) addressed the concern to the District Director, Bari Banks that it appeared that (b) (6), (b) (7)(C) walked into the room while nursing mothers were utilizing the facility on two occasions. I inquired about (b) (6), job duty and position and see if I could interview (b) (6), (b) (7)(C) was off on 9/21/2011 and not available to be interviewed. However, Bari Banks, the District Director, assured me that she would have a private conference with (b) (6), (b) (7)(C) to reiterate the importance of respecting the privacy of nursing mothers. She also stated that she would address the compliance issue department wide to ensure the cooperation with all of her employees.

Publications Given:
HRG, Fact Sheet #73

Date given: 9/21/2011

CMPS:

This is the first investigation of Section 7(r)(1)(B) of the firm. The employer has come into compliance voluntarily and gave WHI (b) (6) an assurance that they would ensure the compliance in the future. (b) (7)(E)

(b) (6), (b) (7)(C)

WHI

9/22/2011

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1633115 Originating District: West Covina District Office
Local Filing Number: 2012-186-05798 Investigating District: West Covina District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 10/07/2011
Assignment Date: 10/07/2011

Employer Information

Trade Name: Terminix Legal Name: The Terminix International Company, LP
Address: 649 South Waterman Ave EIN: 36-3478837
County: San Bernardino
NAICS Code: 56171
San Bernardino, CA92408 No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 10/24/2009 BNPI:
To: 10/23/2011 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Full Investigation Future Compliance Agreed: ☒
Compliance Status: Compliance (no violations found) Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

24 Hrs. Full inv, (b) (7)(E) init. FLSA-NM: Ent Cov under 3(s)(1)(A), 50+ EEs, non-exempt (b) (6) child birth under 1 yr. (b) (6) pd for actual nursing time, private office prvd and no retaliation expd: No apprt FLSA-NM or CL viols found. ADD and DOE notified of inv process and findings. FC held on 11/8/11 w/ C LLamas, HR Mgr, S Schumacher, Rlts Mgr, D Hiltenbrand, FLSA Mgr at SB loc. FLSA policy rev. (b) (6) notified. Pubs given to ER: WH1318, 1330, 1312, 1325, 1281, FS22, 73, BI. RCMD (b) (7)(E) admin closure. NFA reqd

WHI Signature: _____ Date: 11/09/2011

Reviewed By: _____ Date: _____

FLSA-NM NARRATIVE

COVERAGE

The Terminix International Company, LP is doing business as Terminix, it is a corporation engaged as a pest and termite control service center which provides such services to the general public across the USA and Mexico (See Exhibit C1, D13, D16). The 3(d) officer is Thomas G Brackett, President and COO with (b) (4) ownership; he is in charge of the overall business activities that are performed at locations across the USA and Mexico. The office location is located at 649 S Waterman Ave San Bernardino, CA 92408. There are 361 branches of the company (See Exhibit D13). The employer has been in business since 1927. Cristina Llamas, Regional Human Resources Manager was the main point of contact during the investigation (See Business Card).

This was a full investigation covering 10/24/09-10/23/11. The company reported their Gross Volume of Sales for the last three years, they are as follows: 2008 - (b) (4); 2009 - (b) (4) 2010 - (b) (4) and 2011 YTD estimate - (b) (4) (See Exhibit C1, C3). Company employees “*produce*” goods which are “*moved*” in “*interstate commerce*” such as customer and service documentation for the general public in nationwide and Mexico locations and credit card processing through CHASE Paymentech located in Dallas, TX (See Exhibit C5). There are (b) (4) current employees working at the San Bernardino location. Employees are subject to enterprise coverage under 3(s)(A)(1)(ii). FLSA-NM is applicable since the complainant is a non-exempt employee, the child is within 1 year of birth and the employer employs more than 50 employees.

MODO: On 10/25/11, MODO Control Record (b) (7) in Nashville, TN was contacted for guidance, (

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)
(
(See Exhibit D1-D3).

EXEMPTIONS

Section 541.100

Claimed and applicable. Based on the initial conference, payroll records, number of employees,

(b) (6), (b) (7)(C), Fumigation Department Manager: (b) (6), (b) (7)(C) per week/salary

There are other Department Managers which were not tested; all other employees are paid hourly.

Prior History
No prior history was found in WHISARD.

This case was initiated (b) (7)(E) (b) (6), (b) (7)(C) [REDACTED]. WHI (b) (6), (b) (7)(C) received (b) (7)(E) [REDACTED] during the investigation. (b) (7)(E) [REDACTED] did not receive “a place, other than a bathroom, that is shielded from view and free from intrusion from co-workers and the public to express breast milk (b) (7)(E) [REDACTED] (b) (6), (b) (7)(C) [REDACTED] is due no monetary back wages.

A scheduled local visit was made by WHI (b) (6), (b) (7)(C) to meet with Cristina Llamas, Regional Human Resources Manager to gather investigative information. She escorted WHI (b) (6), (b) (7)(C) to view the offices where (b) (6), (b) (7)(C) expressed milk to verify compliance with the FLSA-NM regulations (See Exhibit D4). The company has a “Break Time for Nursing Mothers” policy on their Intranet for employee's to review (See Exhibit D8). Throughout the process, the company was cooperative and met WHI (b) (6), (b) (7)(C) requests.

FLSA-NM

1. Failure to provide adequate breaks:

No apparent violations found:

Records review and discussions with (b) (6), (b) (7)(C) revealed that (b) (6), (b) (7)(C) is paid for the time (b) (6), (b) (7)(C) spends expressing breast milk (See Exhibit E1-E2). In addition, (b) (6), (b) (7)(C) still gets (b) (6), (b) (7)(C) regular scheduled breaks/lunch periods during the day. The employer is not required to compensate (b) (6), (b) (7)(C) for this period under the FLSA-NM regulations.

2. Failure to provide adequate space:

No apparent violations found:

Investigative findings revealed that the employer provided her private offices throughout (b) (6), (b) (7)(C) employment at the San Bernardino and Santa Fe Springs locations (See Exhibit D4-D5). (b) (6), (b) (7)(C) notified WHI (b) (6), (b) (7)(C) that when (b) (6), (b) (7)(C) did not have a specific office designated for (b) (6), (b) (7)(C) as she currently does in San Bernardino, (b) (6), (b) (7)(C) would ask the Manager and it would be vacated quickly for (b) (6), (b) (7)(C) to express milk throughout her day. The employer also verified that this was an accurate account of their actions.

Light issue: Based on the tour at the San Bernardino location, (b) (6), (b) (7)(C) current office does not have a light switch inside; the light switch is located in the storage room in the Warehouse section of the location. The employer has tried to fix the light issue by placing a pad and zip cord so that no employee turns the lights off while (b) (6), (b) (7)(C) is inside expressing milk. Prior to the pad and zip cord placement, it appears the light could have been turned off accidentally by a person simply not knowing that one of the switches controls another office which is way out of view (b) (6), (b) (7)(C) office; the location also experiences occasional power outages regularly and has electrical back-up's for electronic equipment. The employer has agreed to place a lamp inside (b) (6), (b) (7)(C) office for future compliance (See Exhibit D4).

3. Retaliation:

No apparent violations found:

(b) (6), (b) (7)(C) is currently employed and has not experienced any form of retaliation. (b) (6), (b) (7)(C) has notified the employer of (b) (6), (b) (7)(C) situation and the employer has worked with (b) (6), (b) (7)(C) to assist in resolving (b) (6), (b) (7)(C) light issue.

4. Child Labor Recordkeeping:

No apparent violations found:

The date of birth was accurately kept by the employer.

DISPOSITION

A final conference was held at the San Bernardino Terminix location on 11/08/11. WHI (b) (6), (b) (7)(C) represented the US DOL Wage and Hour Division. Cristina Llamas, Regional Human Resources Manager, Stephanie Schumacher, Associate Relations Manager and Donna Hiltenbrand, Wage and Hour Compliance Manager represented the company.

WHI (b) (6), (b) (7)(C) discussed FLSA-NM coverage, FLSA-NM requirements and the overall investigative findings. WHI (b) (6), (b) (7)(C) discussed how no apparent violations were found to exist with the FLSA-NM regulations. (b) (6), (b) (7)(C) is actually paid for (b) (6), (b) (7)(C) time to express milk, is

offered a private office and has not experienced retaliation at either site. (b) (6), (b) (7)(C) requested to be transferred since (b) (6), (b) (7)(C) lives closer to the San Bernardino location. Also, minimum wage, overtime, recordkeeping, and Child Labor statutes were further explained by WHI (b) (6), (b) (7)(C). Ms. Llamas and the team reiterated that they have tried to accommodate (b) (6), (b) (7)(C) with (b) (6), (b) (7)(C) needs and answered (b) (6), (b) (7)(C) questions throughout (b) (6), (b) (7)(C) nursing state. To address (b) (6), (b) (7)(C) issues, WHI (b) (6), (b) (7)(C) recommended the employer to create a “privacy” sign to display on the door and notify on-site and off-site Managers of (b) (6), (b) (7)(C) nursing needs accommodations. WHI (b) (6), (b) (7)(C) advised that there could be a CMP recommendation in the future if violations are found.

The 3 parties agreed to comply with all FLSA-NM requirements in the future. They also agreed to assure payment of the federal minimum wage, time and one half over 40 hours a week, maintain accurate records of hours, and follow the Child Labor requirements. They will call WHI (b) (6), (b) (7)(C) for additional resources and questions. The company agreed that they would remain current with its present and future payroll obligations. No monetary back wages are due to (b) (6), (b) (7)(C).

Copies of the following publications were mailed at the end of the investigation: WH 1318, 1330, 1312,

1325, 1281, Fact Sheet #22, 73 and Basic Information.

(b) (6), (b) (7)(C) Notification: WHI (b) (6), (b) (7)(C) called (b) (6), (b) (7)(C) and discussed the investigative findings.
(b) (6), (b) (7)(C) thanked WHI (b) (6), (b) (7)(C) of the results.

Recommendations:

WHI (b) (6), (b) (7)(C) recommends the case for (b) (7)(E) administrative closure. No further action required.

(b) (6), (b) (7)(C) —————

US DOL WHI
11/09/11

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1640270 Originating District: West Covina District Office
Local Filing Number: 2012-186-05894 Investigating District: West Covina District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 12/19/2011
Assignment Date: 01/04/2012

Employer Information

Trade Name: Anthropologie Legal Name: Urban Outfitters Inc.
Address: 7812 Monet Ave EIN: 23-2686666
County: San Bernardino
NAICS Code: 448190
Rancho Cucamonga, CA91739 No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 08/01/2011 BNPI:
To: 01/18/2012 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

12.25 limited inv. Covered ER & covered EE. Sect. 7(r): ER failed to provide adequate place for expressing milk. Man's restroom was used by EE. Sec. 11: no viol found. ER ATC. EE notified via phone on 1/20/12. MODO notified via email on 1/20/12. Pubs: Fact sheet \$44, 73. Rec. case be admin. closed.

WHI Signature: _____ Date: 01/20/2012

Reviewed By: _____ Date: _____

FLSA NURSING MOTHER (FLSANM) NARRATIVE

COVERAGE

Subject firm, Anthropologie, is a retail business engaged in selling women's fashion and house & home products. Anthorpologie is owned by Urban Outfitters Inc. located at 5000 S. Broad Street #543, Philadelphia, PA 19112. There are 150 – 160 Anthropologie stores throughout the United States with approximately (b) (4) employees. The company also has retail stores in Canada and United Kingdom. Online sales cover countries in Europe and Asia. The subject firm began operation in Rancho Cucamonga in January 2006, and currently the firm employees 30 full-time and part-time employees. Employees of the firm regularly and recurrently handle merchandise that had moved in interstate and international commerce. See exhibit C-1 and C-1a. Gross sales in the last three years exceed \$500,000.00. Enterprise coverage is asserted under Section 3(s)(1)(A) of FLSA.

FLSANM applies to employer with 50 or more employees, and only non-exemption employees are cover under the law. Both criteria are met in this investigation.

MODO: The corporate office is located within the jurisdiction of Philadelphia DO. (b) (7)(E)
See exhibit D-1.

STATUS OF COMPLIANCE

Prior history: WHISARD search found no prior history on the subject firm.

Status: The investigation was initiated based on (b) (7)(E) (b) (6), (b) (7)(C) (b) (7)(E) the employer failed to provide adequate space for expressing milk. A tour of the establishment and initial conference with the employer confirms the violation.

Section 7(r): Section 7(r) of FLSA specifies employer shall provide a place, other than a bathroom, this is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk.

A tour of the establishment shows the retail store has an office, an art room, a storage room and two

restrooms (man and woman). See exhibit D-3 to D-5a. All the above places have lock and electrical outlet. The restrooms and art room also have a sink with running water.

Ms. Jaclyn Snyder, store manager, and Ms. Marsha Beam, visual manager, confirmed (b) (6), (b) (7)(C) used the man's restroom to express milk which is in violation of the Act that excludes a bathroom as an acceptable space.

Section 11: A review of time records did not appear to indicate (b) (6), (b) (7)(C) punch out time was altered. See exhibit D-6 to D-6b. There were days that (b) (6) clocked out passed (b) (6) scheduled time of 3:00 pm. (b) (6), (b) (7)(C)

Section 12: Tour of the establishment did not reveal apparent CL violation.

DISPOSITION

A visit was made to the store on 1/18/2012 and WHI met with Ms. Snyder and Ms. Beam. Both parties admitted they were aware (b) (6), (b) (7)(C) was expressing milk in the man's restroom. Ms. Beam stated upon returning from maternity leave, (b) (6), (b) (7)(C) informed (b) (6) needs to express milk. She then provided (b) (6), (b) (7)(C) with a company policy addressing (b) (6), (b) (7)(C) rights as a nursing mother. See exhibit D-2. (b) (6), (b) (7)(C) was also informed (b) (6), (b) (7)(C) can use any room (b) (6), (b) (7)(C) feels comfortable and for as many times as (b) (6), (b) (7)(C) needs to express milk. It was (b) (6), (b) (7)(C) choice to use the man's restroom as it's toward the back of the store with less interruption. Ms. Beam and Ms. Snyder further stated that all of their nursing mothers had opted to use the man's restroom for its convenient as it has a chair, a table, an electrical outlet, and a sink. Both parties stated they were not aware a bathroom is not an acceptable place. They further stated the State law requires the place has an electrical outlet and a sink.

WHI informed both parties that the employer is required to comply with both Federal and State laws. If the State mandates an electrical outlet and a sink, then they might have to utilize two places to comply with both laws. That's something they will need to check with the State or the only place that's acceptable based on current condition would be the art room. Parties agreed to check with the State and agreed to stop using the restroom as a place for nursing mother to express milk.

Ms. Beam inquired if it is acceptable for the employee to sign a waiver stating the preference of using the man's restroom over other places provided by the employer. (b) (7)(E)

(b) (7)(E)

WHI further informed both parties the break time for expressing milk is not compensable time. If the employer intends to deduct the extra time taking for expressing milk then employee should be instructed to clock out for the break time. Furthermore, WHI informed both parties, employer cannot take negative action against a nursing mother. Retaliation provision of 15(a)(3) does apply. During the conversation with (b) (6), (b) (7)(C) stated (b) (6), (b) (7)(C) felt pressured when (b) (6), (b) (7)(C) took time to express milk. (b) (6), (b) (7)(C) was also instructed to make-up the extra time (b) (6), (b) (7)(C) took to express milk.

Ms. Beam denied (b) (6), (b) (7)(C) was instructed to make-up (b) (6), (b) (7)(C) time. She also stated (b) (6), (b) (7)(C) was struggling with (b) (6), (b) (7)(C) work upon returning from maternity leave. (b) (6), (b) (7)(C) performance level was at level 4, based on 10 being the highest, when (b) (6), (b) (7)(C) first transferred to the store from Pasadena. (b) (6), (b) (7)(C) was already 7 months pregnant. The display coordinator position is new to (b) (6), (b) (7)(C) as (b) (6), (b) (7)(C) was a sales associate in Pasadena. The company realized (b) (6), (b) (7)(C) was still learning. After returning from leave, (b) (6), (b) (7)(C) performance did not pick up, and in fact, (b) (6), (b) (7)(C) performance decreased. (b) (6), (b) (7)(C) was issued a letter of warning for (b) (6), (b) (7)(C) lack of time management, and not meeting deadline. (b) (6), (b) (7)(C) even stated (b) (6), (b) (7)(C) does not think the job is for (b) (6), (b) (7)(C). That might be the reason (b) (6), (b) (7)(C) resigned and transferred back to Pasadena. Ms. Beam and Ms. Snyder agreed not to use extra break time against nursing mother.

Ms. Beam was contacted on 1/20/2012 and informed restroom/bathroom is not an acceptable space for expressing milk. Nursing mother would need to use the art room to express milk based on current setting. Ms. Beam was also recommended to have nursing mother acknowledges the company policy when one is provided. A copy should also be placed in employee personnel file to attest that employer has provided notice to nursing mother. Nursing mother should be instructed not to use the restroom regardless of its convenience. Any disobedience should be documented as well. Ms. Beam agreed to follow WHI recommendations.

MODO was notified of case disposition via email on 1/20/2012, and Ms. Suzuki was notified via telephone on 1/20/2012. (b) (7)(E)

Publications provided: Fact Sheet No. 44 and No. 73.

Recommendation: It's recommended, due to no further action being deemed necessary, that the case be

submitted for (b) (7)(E) administratively closure.

(b) (6), (b) (7)(C)

Wage & Hour Investigator

1/20/2012

WHISARD Compliance Action Report

U.S. Department of Labor Wage and Hour Division

Case ID: 1665687 Originating District: Phoenix District Office
Local Filing Number: 2012-279-08466 Investigating District: Phoenix District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 08/14/2012
Assignment Date: 08/15/2012

Employer Information

Trade Name: Lowes Home Improvement Legal Name: ER not contacted
Address: 16285 N. Scottsdale Rd. EIN:
County: Maricopa
NAICS Code: 444110
Scottsdale, AZ 85254 No. Of Employees: 0

Investigation Information

Period Investigated From: BNPI:
To: Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Future Compliance Agreed: ☐
Compliance Status: Compliance (no violations found) Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

WHISARD Compliance Action Report

Conclusions & Recommendations:

2 HRS: (b) (7)(C) ER failed to provide breaks for (b) (6) to nurse and failed to provide (b) (6) a sanitary place. (b) (7)(E) But there are no other nursing mothers at the establishment. (b) (6) will call (b) (6) district HR manager to see if accomodation can be made for (b) (6) since (b) (6) (b) (7)(E). Case is concluded as (b) (7)(E) for tracking purposes in WHISARD. No vio. ER was never notified. Rec admin closure.

WHI Signature: _____ Date: 08/28/2012

Reviewed By: _____ Date: _____

Memorandum

Date: 2:56:21 PM

To: File

From: (b) (6), (b) (7)(C)

Re: Lowes Home Improvement Case # 1665687

(b) (6), (b) (7)(C) (b) (7)(E) ER has not been able to find a room free from intrusion for (b) (6) to use and that (b) (6) is not able to take (b) (6) breaks to express milk. On 8/15/12, WHI (b) (6), (b) (7) contacted (b) (6), (b) (7)(C) to inquire on (b) (6), (b) (7)(C) current situation. (b) (6), (b) (7)(C) stated that ER has since put (b) (6), (b) (7)(C) in the computer server room. The manager's room that (b) (6), (b) (7)(C) had been using (but was intruded in on twice) was no longer available to her due to renovations. (b) (6), (b) (7)(C) does not want to be in the server room because it is cold and dusty. (b) (6), (b) (7)(C) would also like to have use of (b) (6), (b) (7)(C) breaks to express milk. WHI (b) (6), (b) (7)(C) informed (b) (6), (b) (7)(C) that the breaks should be made available to (b) (6), (b) (7)(C) but the law only requires the ER to provide a space that is shielded from view and free from intrusion. (b) (7)(E) (b) (6), (b) (7)(C), the ER has been trying to find an adequate space by putting (b) (6), (b) (7)(C) in 5 different offices. (b) (6), (b) (7)(C) does not want (b) (6), (b) (7)(C) name to be used but there is no one else in the company who is nursing. (b) (6), (b) (7)(C) decided that (b) (6), (b) (7)(C) will contact (b) (6), (b) (7)(C) district HR manager to see if better accommodations can be made for (b) (6), (b) (7)(C). (b) (7)(E) (b) (6), (b) (7)(C) told WHI (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) will contact (b) (6), (b) (7)(C) on 8/16/12. On 8/16/12, WHI (b) (6), (b) (7)(C) left a message for (b) (6), (b) (7)(C) to call WHI (b) (6), (b) (7)(C) by 8/17/12 if (b) (6), (b) (7)(C) still would like WHD to pursue this case. WHI (b) (6), (b) (7)(C) called (b) (6), (b) (7)(C) on 8/17/12 to ask if (b) (6), (b) (7)(C) reached (b) (6), (b) (7)(C) district HR manager. (b) (6), (b) (7)(C) has not yet contacted (b) (6), (b) (7)(C) district HR manager and will call WHI (b) (6), (b) (7)(C) back by the end of the day on 8/17/12 or Monday at the latest. On 8/20/12, WHI (b) (6), (b) (7)(C) left a message for (b) (6), (b) (7)(C) to call (b) (6), (b) (7)(C) back if (b) (6), (b) (7)(C) would like WHD to pursue her case. (b) (6), (b) (7)(C) has not contacted WHI (b) (6), (b) (7)(C) as of 8/28/12. Case will be concluded with no findings.

ER was never notified (b) (7)(E). This case is recorded as (b) (7)(E) in WHISARD for tracking purposes under FLSNM. (b) (7)(E) case can be reopened.

WHISARD Compliance Action Report

U.S. Department of Labor Wage and Hour Division

Case ID: 1692846 Originating District: Las Vegas District Office
Local Filing Number: 2013-280-01093 Investigating District: Las Vegas District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 04/26/2013
Assignment Date: 11/12/2013

Employer Information

Trade Name: Clark County School District Legal Name: Clark County School District
Address: 6500 E Sahara Ave EIN: 88-6000030
County: Clark
NAICS Code: 09240
Las Vegas, NV89142 No. Of Employees: 1000

Investigation Information

Period Investigated From: 01/01/2011 BNPI:
To: 12/16/2013 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Compliance (no violations found) Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

WHISARD Compliance Action Report

Conclusions & Recommendations:

13(s)(1)(B) cov as school district. No prior for the provision. (b) (7)(E) failure to provide breaks and a place for nursing. No viols found since EE found exempt under Section 13(a)(1) professional exemption as a teacher-librarian with specialized education in the field. . FC w/ Asst. General Counsel Scott Greeberg on 12/27/2013. Rec. adm. close.

WHI Signature: _____ Date: 01/17/2014

Reviewed By: _____ Date: _____

Clark County School District
2832 East Flamingo Road
Las Vegas, NV 89121
EIN: 88-6000030
POC: Asst. General Counsel Scott Greenberg
(702) 799-5373

FLSA NARRATIVE REPORT

COVERAGE:

The employer is a city school district that oversees multiple secondary public schools throughout the city. The main administrative office is located at the above address. It is covered under (3)(s)(1)(B) under FLSA as a secondary school.

The employer has several prior FMLA case histories with no violations per WHISARD.

We are the MODO.

EXEMPTION

Professional exemption under Section 3(s)(1)(a) is applicable to (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) annual) who is a teacher-Librarian with a bachelor's degree in education and a master in library science in (b) (6), (b) (7)(C) specialized field (B-1). (b) (6), (b) (7)(C) was paid the same guaranteed salary amount of at least \$455 per week in a Bi-weekly pay period. Break Time for Nursing Mothers provision under the FLSA requires that only employees who are not exempt from FLSA section 7 are entitled to breaks to express milk (D-1b). Therefore the employee is exempt and no jurisdiction is found in the case.

STATUS OF COMPLIANCE

This is (b) (7)(E) (b) (6), (b) (7)(C) (b) (7)(E) failure to provide reasonable break time and a place under the Break Time for Nursing Mothers under the FLSA (See email records with the employer regarding the issue in D-2). (b) (7)(E) based on review of employee interview and employer information (D-1) since the employee was found exempt under FLSA as claimed by the employer as a professional employee with a 4 year specialized degree in the related field.

BREAK TIME FOR NURSING MOTHERS PROVISION

No violation was found due to the applicable exemption as discussed above.

DISPOSITION

Final conference was held by phone with the Assistant General Counsel Scott Greenberg on 12/27/2013 since the employer is located in Las Vegas. I notified the Counsel that the employee was found exempt under the provision as previously claimed by him (D-1) and therefore no further action is required.

(b) (6), (b) (7)(C) was notified of the result by phone. I advised (b) (6), (b) (7)(C) was found exempt under the law therefore the school was not obligated to provide such breaks. (b) (6), (b) (7)(C) stated the school still allowed some other teachers to arrange time to express before their scheduled classes but did not allow (b) (6), (b) (7)(C) to do that since (b) (6), (b) (7)(C) has to be on duty the whole time as a librarian. (b) (6), (b) (7)(C) stated (b) (6), (b) (7)(C) checked with the state and they said the school needs to allow it. I advised (b) (6), (b) (7)(C) can check with the state since the school may be obligated under the state law as discussed under the particular federal provision and (b) (6), (b) (7)(C) still has the right of private action.

I recommend that the case be closed administratively.

(b) (6), (b) (7)(C)

Investigator

12/27/2013

Revised 1/6/2014

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1700875 Originating District: Las Vegas District Office
Local Filing Number: 2013-280-01156 Investigating District: Las Vegas District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 07/12/2013
Assignment Date: 07/12/2013

Employer Information

Trade Name: HMSHost North America Legal Name: HMSHost Corporation
Address: McCarran International Airport EIN: EIN Missing
P.O. Box 11007 County: Clark
Las Vegas, NV89111 NAICS Code: 722211
No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 05/21/2013 BNPI:
To: 07/12/2013 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

Total Violations Under FLSNM: 2 \$0.00

WHISARD Compliance Action Report

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

(b) (7) was told to express milk in restroom,& even 1 Mgr won't let (b) (6), (7) go to express milk. COV: ADV>500K; EEs>30K. EXE:C is not exe under Sec.7. (b) (7) is covered by Sec 7(r). A meeting was held w/HR Rep.Christine Steele. ER ATC by notifying all Mgrs about this law & providing a place,other than a restroom,shielded from view & free from intrusion from coworkers & public for nursing mothers to express milk as many times as needed.FS & FAQ were provided. I recommend this case be admin. concluded.

WHI Signature: _____ Date: 07/18/2013

Reviewed By: _____ Date: _____

FLSA Narrative Report

Case File Number: 2013-280-01156

HMSHost North America Christine Steele, Human Resource Generalist
HMSHost Corporation sCell: 702.496.3013
McCarran International Airport Phone: 702.261.4361
(HR Department is located on Fax: 702.261.4365
2nd floor inside Terminal 1)
P.O. Box 11007
Las Vegas, NV 89111

MODO:
HMSHost North America
6905 Rockledge Drive
Bethesda, MD 20817
240.694.4100

Reason for Break Time for Nursing Mothers Investigation: This investigation (b) (7)(E)

(b) (6), (b) (7)(E) The employee (b) (7)(E) when (b) (6), (b) (7)(E) requested a place to express milk at work, (b) (6), (b) (7)(E) was told to do it in the restroom, and even one of the Managers would not let (b) (6), (b) (7)(E) go to express milk. (b) (6), (b) (7)(C) believed the company was in violation under Break Time for Nursing Mothers under Fair Labor Standards Act (FLSA). (b) (7)(E)

Coverage:

Subject firm operates and manages hundreds of different restaurants and retail shops at travel venues including airports, motorways, specialty destinations and mall. Subject firm has employed approximately (b) (4) employees at McCarran International Airport in Las Vegas and (b) (4) employees nationwide. Christine Steele admitted that company gross sales are exceeded \$500,000 in a year; therefore, the firm is a covered employer under the FLSA (see Exhibits C-1 to C-4).

Investigative History: No prior history regards to Break Time for Nursing Mothers under FLSA.

MODO Contact: Contact was made in WHISARD with the Baltimore District Office on 07/18/2013. The case was associated in WHISARD on 07/18/2013 (see exhibit D-1).

Exemption:

Overtime exemption was tested to determine whether (b) (6), (b) (7)(C) is exempt from Break Time for Nursing

Mothers under Section 7 of the FLSA. Based on the interview statement, (b) (6), (b) (7)(C) is a fast food attendant and (b) (6), (b) (7)(C) does not perform any management duties. Also, (b) (6), (b) (7)(C) job duties do not qualify for any overtime exemption under the FLSA. Christine Steele confirmed that the company classified Fast Food Attendant as non-exempt employee; therefore, (b) (6), (b) (7)(C) is not exempt from Break Time for Nursing Mothers under Section 7 of the FLSA (see Exhibits B-1, C-1 and C-3).

Investigation Period: Investigation covered the period 05/21/2013 to 07/12/2013 and was limited to (b) (6), (b) (7)(C)

Status of Compliance:

Violation was found due to employer did not provide reasonable break time and place for nursing mother to express breast milk under Section 7(r) of the FLSA.

Disposition:

A meeting was held with Christine Steele, Human Resource Generalist on 07/12/2013.

General provisions of the Break Time for Nursing Mothers under FLSA were discussed with specific attention paid to violations.

Question was asked whether any nursing mothers currently needed a place to express milk; Christine Steele stated she had no knowledge of any employees who were nursing mothers needed a place to express milk. (b) (6), (b) (7)(C), (b) (7)(E) in order to obtain future compliance and Christine Steele was notified that (b) (6), (b) (7)(C) was told to express milk in the restroom. The employer agreed to future compliance by providing a place, other than a restroom, that is shielded from the view and free from intrusion from co-workers or the public as many times as needed for the nursing mothers after (b) (6), (b) (7)(C) self-identified. The employer stated that the adjacent office from her office is vacant and nursing mother can use that office to express milk. The employer was notified that the duration of the break time for nursing mother can be up to one year of the child's birth and the employer must have a place, other than a restroom, available for the nursing mothers each time she needs to express milk. So, when the office is not longer vacant, the employer is still required to find a place for nursing mothers to express milk. The employer stated she understood. Publications were given to Christine Steele and she stated she would let all the management knows about this law.

(b) (6), (b) (7)(C) was notified the finding via telephone on 07/15/2013 and asked (b) (6), (b) (7)(C) to contact WHI (b) (6), (b) (7)(C) again if (b) (6), (b) (7)(C) found any issues regards to express milk at work.

On 07/18/2013, a call was made to (b) (6), (b) (7)(C) to ensure the company is in compliance. (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) did not talk to Christine Steele directly but all (b) (6), (b) (7)(C) Managers received an email regards to this issue; they all came to (b) (6), (b) (7)(C) and let (b) (6), (b) (7)(C) know that the place (b) (6), (b) (7)(C) can express milk which is no longer the restroom. Since (b) (6), (b) (7)(C) often works at different terminals, employer also provides a place at each terminal without (b) (6), (b) (7)(C) walking

WHISARD Compliance Action Report

U.S. Department of Labor Wage and Hour Division

Case ID: 1716905 Originating District: Los Angeles District Office
Local Filing Number: 2014-231-07437 Investigating District: Los Angeles District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 01/14/2014
Assignment Date: 01/14/2014

Employer Information

Trade Name: Compass Group USA, Inc. Legal Name: Compass Group USA, Inc.
Address: 200 South Grand Avenue EIN: 22-2356480
2400 Yorkmonth Rd NC, 28217 County: Los Angeles
Los Angeles, CA 90012 NAICS Code: 722212
No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 01/06/2014 BNPI:
To: 02/07/2014 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☐
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

PPACA-FLSNM- Break for Nursing Mothers . ER failed to comply with Sec 7 (r)(1)(B) and did not provide private room to Nursing mother that was free fro Intrusion. They agreed to comply and provided room for ee; Violation was remedied and corrected

WHI Signature: _____ Date: 02/21/2014

Reviewed By: _____ Date: _____

2014-231-07437

Case ID 1716905

**Compass Group USA, Inc.
200 South Grand Avenue
Los Angeles, CA 90012**

Corporate Office :

**2400 Yorkmont Rd
Charlotte , North Carolina 28217**

FLSANM NARRATIVE

REASON FOR INVESTIGATION

This investigation was conducted (b) (7)(E) (b) (6), (b) (7)(C) is protected under the Patient Protection and Affordable Care Act, amendment to the FLSA (Break Time for Nursing Mothers). (b) (6), (b) (7)(C) (b) (7)(E) (b) (6) supervisor (b) (6), (b) (7)(C) did not provide (b) (6), (b) (7)(C) with a private room in which (b) (6), (b) (7)(C) could express (b) (6), (b) (7)(C) breast milk upon (b) (6), (b) (7)(C) return from maternity leave. (b) (6), (b) (7)(C) was told to use the bathroom or the office where all the employees clock in and out. However, (b) (6), (b) (7)(C) was instructed not to lock the door behind (b) (6), (b) (7)(C) since employees needed the room to clock in and out. The room provided was not free from intrusion and several times people walked in on (b) (6), (b) (7)(C) while (b) (6), (b) (7)(C) was pumping her milk.

COVERAGE

Compass Group USA Inc. is a covered employer under section 3(s)(1)(C) of the FLSA as a public agency.

(b) (6), (b) (7)(C) is specifically covered under the Break Time for Nursing Mothers provision of the FLSA because (b) (6), (b) (7)(C) is a nursing mother with a need to express milk for (b) (6), (b) (7)(C) three month -old child. ***See Ex. B-1.***

PERIOD OF INVESTIGATION

Period of investigation was limited to the time when (b) (6), (b) (7)(C) was covered under the Break Time for Nursing Mothers provision, beginning on the day (b) (6), (b) (7)(C) returned to work from (b) (6), (b) (7)(C) maternity leave. (b) (6), (b) (7)(C)

MODO

The Raleigh North Carolina office is the MODO. Their Corporate Office address is located at 2400 Yorkmont Rd Charlotte, NC . The MODO was notified and the case associated on January 22, 2014. (b) (7)(E)

(b) (7)(E) See Ex. D-2

PRIOR HISTORY

No other prior history at this establishment regarding Break Time for Nursing Mothers provisions. However, since employer has locations all over the U.S., this firm has extensive history on FLSA investigations and some FMLA, among other acts. MODO case log on WHISARD showed all the previous Investigations for this employer; some of the most recent Investigations were, Case Id #'s: 1720002, 17112415, 1697219, 1690576, 1684188 and 1680879. (b) (7)(E)

EXEMPTIONS

Not applicable. (b) (6), (b) (7)(C) is a non-exempt employee paid on an hourly basis and is therefore subject to Section 7 of the FLSA and the protections of the Break Time for Nursing Mothers provision of the FLSA.

STATUS OF COMPLIANCE

Section 7(r)(1)(A) – Reasonable Break Time

No Violation found. The employer allowed (b) (6), (b) (7)(C) to use (b) (6), (b) (7)(C) paid breaks and lunch to pump (b) (6), (b) (7)(C) milk.

Section 7(r)(1)(B) – A Place, Other than a Bathroom, Shielded from View and Free from Intrusion

Violation found. Employer did not provide (b) (6), (b) (7)(C) with a room shielded from view and free from Intrusion since (b) (6), (b) (7)(C) was asked to use the bathroom or the lunch room where the employees clocked in and out. They agreed to comply in the future and provided (b) (6), (b) (7)(C) with an unoccupied office whenever (b) (6), (b) (7)(C) needed to pump (b) (6), (b) (7)(C) milk. Access to the office was confirmed by WHI, (b) (6), (b) (7)(C) and it was found to be adequate.

Section 15(a)(3) – Prohibiting Retaliation Under the FLSA

No violation found. The Employer did not retaliate against the employee and understood the reasons behind (b) (6), (b) (7)(C) Mr, Joshua Glaser, the Director stated he was not aware this was happening since it was never brought to his attention. (b) (6), (b) (7)(C) immediate supervisor, (b) (6), (b) (7)(C) never mentioned this was an issue until he heard from our department.

DISPOSITION

On February 3, 2014, I met with Mr Joshua Glaser, Director, and Mrs Laurie Klempner, Manager of Administrative Services, to discuss (b) (6), (b) (7)(C) (b) (7)(E), as well as what steps needed to be taken in order to come into compliance. See Ex. C-1. After we reviewed the statutory language and Fact Sheet #73, Mr. Glaser acknowledged the law entitles (b) (6), (b) (7)(C) to be provided with a private room that is shielded from view

and free from intrusion from co workers and the public to pump (b) (6), (b) (7)(C) milk. Mr Glaser and Ms Klempner took me on a tour to the room in which (b) (6), (b) (7)(C) would be provided ; it was an unused office that was very private and free from intrusion. They agreed to comply in the future .

RECOMMENDATIONS

(b) (7)(E) I recommend that this case be administratively closed.

(b) (6), (b) (7)(C) NOTIFICATION

On 2/11/2014, I spoke with (b) (6), (b) (7)(C) regarding my investigative findings. (b) (6), (b) (7)(C) confirmed that (b) (6), (b) (7)(C) employer had accommodated (b) (6), (b) (7)(C) with a private unoccupied room/office in which (b) (6), (b) (7)(C) could pump (b) (6), (b) (7)(C) milk free from intrusion during (b) (6), (b) (7)(C) paid breaks.

PUBLICATIONS

The following publications were discussed and provided on February 3, 2014: Handy Reference Guide, Fact Sheets # 44, 73, 77A and 29 U.S.C. § 207(r).

(b) (6), (b) (7)(C)

Wage & Hour Investigator
2/21/14

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1720798 Originating District: San Francisco District Office
Local Filing Number: 2014-316-08541 Investigating District: San Francisco District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 02/21/2014
Assignment Date: 02/21/2014

Employer Information

Trade Name: Alameda County Fire Dept

Legal Name: Alameda County Fire Department

Address: 835 E. 14th St ste 200

EIN: 94-3175000

County: Alameda

NAICS Code: 922160

San Leandro, CA94577

No. Of Employees: 375

Investigation Information

Period Investigated From: 03/07/2012
To: 03/06/2014
Investigation Type: (b) (7)(E)
Investigation Tool: Limited Investigation
Compliance Status: Agree to Comply

BNPI:
Reinvestigation: ☐
Recurring Violation: ☐
Future Compliance Agreed: ☒
Involved in AG: ☐

Recommended Action:

BWFS:	<input type="checkbox"/>	RO/NO Review:	<input type="checkbox"/>
CMP:	<input type="checkbox"/>	Follow Up Investigation:	<input type="checkbox"/>
Litigation:	<input type="checkbox"/>	Other Action:	<input type="checkbox"/>
Civil Action:	<input type="checkbox"/>	Denial of Future Certificate:	<input type="checkbox"/>
Criminal Action:	<input type="checkbox"/>	BW Payment Deadline:	
Submit For Opinion:	<input type="checkbox"/>	Trailer forms attached:	<input type="checkbox"/>

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

28.5hrs- FLSANM-cov. under section 3(s)(1)(B); (b) (6) is non-exempt fire engineer. (b) (7)(E) (b) (6) was not provided an accessible, private space for expressing breast milk and used restroom at fire station.. Sec. 7 (r) vio (b) (7)(E) as additional IN's/ tour of est. revealed EE's used restrooms/break rooms, not given direction on other locations that could be used. FC held on 04/25/14 w/ HR Aracelia Esparza ; firm ATC by increasing communication w/ EE's and creating temp locations if needed. Rec admin close

WHI Signature: _____ Date: 05/01/2014

Reviewed By: _____ Date: _____

835 E. 14th Street, Suite 200
San Leandro, CA 94577

FLSNM NARRATIVE REPORT

Coverage

The subject firm is the Alameda County Fire Department which is comprised 30 fire stations which service an area of approximately 508 square miles. In addition to Fire response in the area of Alameda County, the employer also specializes in Urban Search and Rescue and Water Rescue. (See Exhibit C-3 and C-4)

Enterprise coverage under section 3(s)(1)(C) of the FLSA applies, as the firm is a local government agency. The firm employs over 50 employees throughout its various locations.

MODO

The Alameda County Fire Station Administrative Office is located in San Leandro, CA. SFDO is the MODDO office. No MODDO request needed.

Exemptions

No exemptions claimed.

Status of Compliance

Prior History: This is the first known investigation of the employer.

Investigative Period: March 7, 2012 through March 6, 2014.

Case Assignment: This case is (b) (7)(E) (b) (6), (b) (7)(C) is employed as fire engineer. (b) (6), (b) (7)(C) stated that (b) (6) had been employed with the Alameda Fire Department (b) (6), (b) (7)(C). The complainant stated that (b) (6) had left on maternity leave and had returned to work which (b) (6) infant had turned (b) (6), (b) (6), (b) (7)(C) states (b) (6) was never offered anything other than a bathroom to express milk at the fire station which (b) (6) was working at. (b) (6), (b) (7)(C) also stated there were 7 other women which were nursing, 2 of which had infants younger than 12 months. At the time the investigation started, (b) (6), (b) (7)(C) child was (b) (6), (b) (7)(C). (See Exhibit B-3)

The current investigation was handled as a limited investigation which examined the scope of compliance applicable to nursing mother under section 7 of the FLSA.

Break Time for Nursing Mothers:

Section 7(r)(1)(A)- provides that nursing mothers are entitled to provide “a reasonable break time” for an employee to express milk “each time such employee has need to express milk”.

Per Interviews, break time to express was not an issue. Employees were paid for all break times. Conversation with HR manager, Aracelia Esparza, confirmed employees were allowed to use break times to express milk. (See Exhibit B-3)

Section 7(r)(1)(B)- requires employers to provide a “place other than a bathroom, that is shielded from view and free from intrusions from coworkers and the public, which may be used by an employee to express breast milk”.

Per initial conference with HR manager, Aracelia Esparza, the Fire Department did not have any written policy relating specifically to break time for nursing mothers. Ms. Esparza explained if that she was aware that employees could use empty offices in order to express milk at the admin office. In addition, the department provided generous accommodations for expectants mother who had concerns about working at the fire stations during their pregnancy. (Exhibit B-1)

(b) (6), (b) (7)(C) fire station where (b) (6), (b) (7)(C) worked at (Fire Station 7), did not have any locations other than a bathroom to express milk. On March 20, 2014 WHI (b) (6), (b) (7)(C) visited Fire Stations 7, 13 and the Administration Office with Deputy Fire Chief, David Lord. Review of locations show space is limited, and rooms would need to be vacated by other employees in order to be used by nursing mothers. (See Exhibits B-3, E-1) Chief Lord explained that certain rooms were not dedicated to nursing mothers, but if a concern was expressed by an employee, rooms with doors such as the barracks and the Captains room. If concern for privacy was an issue, doors could be locked and a sign could be put outside the door during use. Both Fire stations displayed same type of setup. Tour of administration office and interview of current nursing mother, showed administration office had empty offices, which were used to nurse. Employee stated blinds could be drawn and doors locked to ensure privacy. (See Exhibit B-2, B-3)

Contact was made with (b) (6), (b) (7)(C) to discuss issues. (b) (6), (b) (7)(C) stated that restrooms were used to express milk at the fire stations because space was limited. (b) (6), (b) (7)(C) expressed discomfort having to ask (b) (6), (b) (7)(C) male employees and fire chief to leave during certain times because of (b) (6), (b) (7)(C) need to express milk.

(b) (6), (b) (7)(C) stated nothing official in writing showing what locations an employee could ask to use for expressing milk.

(b) (6), (b) (7)(C) (b) (7)(E) regarding the firm's failure to provide adequate space (b) (7)(E) based on interviews and information provided by the employer. (b) (6), (b) (7)(C) was informed that although a violation existed from the period from which (b) (6), (b) (7)(C) returned to work until the infant reached 12 months, that requirements under FLSNM only covered 12 months.

Section 6- Minimum Wage

No violations were established during the investigation.

Section 7- Overtime

Violation established. The firm failed to provide adequate space for a nursing mother at one of its fire stations.

Section 11: (RK)

No violations were established during the investigation.

Section 12: Child Labor

No violations of child labor were uncovered during the investigation.

Disposition:

A telephonic final conference was held on April 25, 2014. Present at the final conference were WHI (b) (6), (b) (7)(C), Aracelia Esparza (HR), and David Lord (Deputy Fire Chief). WHI discussed the regulation as well as answer any questions relating requirements.

WHI (b) (6), (b) (7)(C) explained that the investigation revealed the firm had violated Section 7(r) of the FLSA. Specifically the firm had failed to provide an adequate space in accordance with the regulations. WHI explained that employees had used bathrooms at fire stations, because the limitations on private rooms available and no knowledge of rooms that could be requested for use to express. WHI also explained that these regulations covered the employee until the child reached 12 months of age.

WHI held a detailed discussion about rooms not having to be permanently dedicated to use for nursing mothers, however employee should be made aware of their rights, and who they can speak to set up a temporary location to be used for expressing. Ms. Aracelia Esparza stated she understood the sensitivity of the issue. Ms. Esparza stated that although rooms were limited she was sure that they could accommodate

the rooms for private use temporarily for women during the nursing stage. Ms. Esparza stated the department would post Break time for Nursing Mothers Fact Sheets on bulletin boards at the fire stations. In addition, Ms. Esparza stated that the department would incorporate the nursing mother's fact sheet in "return to work" paperwork for women return from pregnancy leave. Ms. Esparza added that she would be including her contact information in this paperwork so that nursing mothers could call her so that she could make contact with the different fire stations to set up accommodations. Ms. Esparza stated she would also try to make contact with all women who have recently returned from pregnancy leave to insure they have proper accommodations.

Publications provided: Fact Sheet #44 and #73. DOL nursing mothers FAQ's website information.

Recommendation

It is recommended that this case be administratively closed (b) (7)(E)

(b) (6), (b) (7)(C)

Investigator
May 1, 2014

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1740079 Originating District: Seattle District Office
Local Filing Number: 2014-323-07167 Investigating District: Seattle District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 09/11/2014
Assignment Date: 10/02/2014

Employer Information

Trade Name: Overlake Hospital Legal Name: Overlake Hospital Medical Center
Address: 1035 116th Ave NE EIN: 91-0652651
Bellevue, WA98004 County: King
NAICS Code: 622110
No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 12/09/2012 BNPI:
To: 12/07/2014 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Full Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSA Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	
Total Violations Under FLSNM:	2						\$0.00

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

Sec 3(s)(1)(B) cov. 207(r)(1) vio:ER failed to provide functional space and adequate break time for nursing mothers. RK vio: records not accurate. Sec 15(a)(3)Retaliation (b) (7)(E). FC w/ER on 1/13/2015 & 2/6/2015, ER ATC. WH1088(Poster), WH1282(HRG), WH1261(RK), WH1262(OT), WH1281(541),WH1312(HW), FS28d,FS44,FS73^(b) notified of dispos. on 2/6/2015. ^{(b)(7)(E)} stated had hired atty & intended to file suit.Rec: Conclude in Whis

WHI Signature: _____ Date: 02/13/2015

Reviewed By: _____ Date: _____

Case ID: 1740079

Overlake Hospital Medical Center
1035 116th Ave NE
Bellevue, WA 98004
425-688-5000

EIN: 91-0652651

FLSA NURSING MOTHERS NARRATIVE

This is a full investigation and was initiated (b) (6), (b) (7)(C).

(b) (6), (b) (7)(C) (b) (7)(E) (exh. D-2)

Coverage

The subject firm, Overlake Hospital Medical Center, is engaged in the operation of a hospital, providing care to the residents who are sick, aged, or disabled that need medical attention. It's established as a corporation in WA State in 1970. The corporate office is located on 1250 NE 145th Street, Shoreline, WA 98155. The ADV for is approximately (b) (4) million per year. There are total (b) (4) employees for the enterprise. The subject firm employs doctors and nurses onsite to provide medical care and administer the medication. All employees are covered on an enterprise basis under 3(s)(1)(B) of the Fair Labor Standards Act for the entire investigative period. (Exh. C-1, C-2)

Corp. Office:

Overlake Hospital Medical Center - 1035 116th Ave NE, Bellevue, WA 98004, 425-688-5000

Branch locations:

Information Service/Epic Department - 1120 112th Ave NE, Fifth Floor, Bellevue, WA 98004

Overlake Specialty School - 2610 116th Ave NE, Bellevue, WA 98004

Breast Screening Center-Issaquah/Highmark Specialty Center - 1740 NW Maple St, Suite 207, Issaquah, WA 98027

Overlake Outpatient Behavioral Health Services - 1750 112th Ave NE, Suite B-102, Bellevue, WA 98004
Overlake Senior Health Center - 1750 112th Ave NE, Suite A-101, Bellevue, WA 98004
Overlake Outpatient Medical Imaging-Issaquah - 5708 E. Lake Sammamish Pkwy SE, Issaquah, WA 98029
Overlake Outpatient Medical Imaging-Redmond - 17209 Redmond Way, Redmond, WA 98052

Sec. 3(d) Employer:

Brain Read, Total Compensation Director. Mr. Read is in charge of compensation department and handles all issues related to employees' compensation, deals with government authorities for any audits and investigations.

Lisa Morten, HR Director. Ms. Morten is in charge of human resources department.

Corporate Officers:

John Hayhurst, Chair
Jim Doud, Secretary
Patricia Bedient, Treasurer
Cecily Hall, Immediate Past Chair
J. Michael Marsh, President & CEO
David Schultz, Executive VP & COO
Gary McLaughlin, Executive VP Finance & CFO

Period of investigation: 12/9/2012 to 12/07/2014

MODO: The MODO is Seattle, WA DO. Case has been associated with MODO on Jan15, 2015. (exh. D-1)

Prior History: (exh. D-3)

May 2006 (b) (7)(E) case. Case# 1436417. No violation found. Employer covered, employee FMLA eligible.
(b) (6), (b) (7)(C) wasn't terminated due to use of FMLA but for excessive unscheduled, non-FMLA absences. No back wage due.

1099s: None claimed

Sec, 16(b): None

Exemptions:

None claimed.

541.300 Professional exemptions:

Physicians, registered or certified medical technologists, and Registered Nurses (RN) meet 541 professional exemption requirements, but Licensed Practical Nurses (LPN) and Patient Care Technicians do not.

Status of Compliance:

(b) (6), (b) (7)(C) Data:

(b) (6), (b) (7)(C) of the subject firm, (b) (7)(E) supervisor changed (b) (6) hours worked on timecard, deducting time worked and charging breaks even when employees didn't take them. (b) (6), (b) (7)(C) (b) (7)(E) supervisor has not allowed nursing mothers to take break and didn't provide a secure place for them to express milk. (b) (6), (b) (7)(C) seeks back wage for missed hours worked and proper employer policy for nursing mothers. (b) (6), (b) (7)(C) also (b) (7)(E) (b) (6) was being discriminated and fired from her job wrongfully.

(b) (7)(E)

1. Nursing Mothers – ER ATC.
2. Deducted hours and charged for untaken lunch break. – no back wage due since (b) (6), (b) (7)(C) worked 40 hours or less per work week. Per Klinghoffer Rule, only \$7.25/per hour is enforced.

(b) (7)(E)

- I. Discrimination – insufficient evidence
- II. Changed her hours worked on timecard – employer used 7-minutes “rounding” practices. (CFR785.48(b))
Also, (b) (6), (b) (7)(C) hours worked were recorded under different floors time-keeping account when (b) (6) work on floating shift and went to work at the different floor. (b) (6) hours worked were recorded and not lost.

FLSNM:

207(r)(1)(A) – Failure to provide adequate break time (frequency, duration, or complete denial):

Violation found.

(b) (6), (b) (7)(C) was not given adequate break time to express milk when needed. (b) (7)(E) was supported by other employees. Other nursing mothers also have had the same problem with the break time since the employer is a hospital

medical center, and employees are not able to take a break due to the nature of the business. Employees are required to carry a phone and need to return to work immediately when get called since the patients need medical attention immediately, this especially true in the emergency, surgery, and the post-surgery floors. Failure to provide adequate break time has caused an employee to have breast infection. (exh. B-1, B-2, B-4, B-5, B-7 to B-9, B-11, B-15-B-17)

207(r)(1)(B)- Failure to provide functional space (bathroom not permissible, space not free from intrusion, not shielded from view):

Violations found.

(b) (6), (b) (7)(C) does not have a private space where (b) (6) can express the milk free from intrusion. The company has provided a room for the use of expressing milk, but the room was also used as physician/admin/consultant office. The room doesn't have a lock. It has window but doesn't have any window covering. Employees testified that the nursing mothers had to hang a bed sheet over the window, and other employees still just pop in despite that they had put a note on the door that tell people it's in use. The room has chairs and a table, but doesn't have refrigerator. (exh. B-1, B-2, B-4, B-5, B-7 to B-9, B-11, B-15-B-17)

207(r)(2) – Compensation for break time:

No violations found.

The employer has paid (b) (6), (b) (7)(C) for (b) (6) time expressing milk.

207(r)(3) – Undue Hardship:

No violations.

The employer has hundreds of employees at the location where the employee works and made no objection to its obligation to comply with the law.

FLSA:

Section 6:

There is no apparent minimum wages violation.

Payroll and time card analysis revealed that employees generally were paid above the applicable Federal minimum wages

of \$7.25 per hour.

Lunch break:

Employees are not required to clock in & out for lunch break. The employer deducted the 30 minutes lunch break automatically. If anyone didn't take lunch break, they're required to notify the supervisor and do an adjustment on time card per company policy. Some employees stated that their lunch break was interrupted sometimes for they're called back to duty during the lunch break and were not paid for that ½ hour. After reviewing their time & pay records, it appeared that they're either paid for or didn't work more than 40 hours in a work week. Per Klinghoffer Rule, only Federal minimum wage of \$7.25 per hour is enforceable in the non-overtime weeks. (exh. B-1 to B-18)

Time recording / Keeping:

Employer used 7-minutes as a “rounding” practices. (CFR785.48(b)) If employee clocked in at, for example, 7:06pm, it changed to 7:00pm, and if employee clocked in at 7:09pm, it changed to 7:15pm. It was found that employer use this time-keeping method in the favor of both employer and employees, and over a period of time, the employees were properly compensated for all the time they have actually worked.

Section 7:

There is no apparent overtime violation.

Section 11:

There was a violation.

The time and pay records were not accurately. Employer failed to keep and paid the untaken lunch break.

Section 12:

No employment of minors was observed or found. (exh. B-1 to B-12)

Section 15(a)(3) Prohibited Acts - Retaliation:

(b) (6), (b) (7)(C), (b) (7)(E) [REDACTED] was retaliated by (b) (6) manager, and then eventually was terminated for unjust reasons.

(b) (7)(E) [REDACTED]

(b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) had documents and co-workers as witness that (b) (6), (b) (7)(C) been doing well on the job, and that the employer's allegation of (b) (6), (b) (7)(C) wrong doing / unprofessional treatment of patients was not true. (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) would provide those documents and have statements from (b) (6), (b) (7)(C) co-workers, but (b) (6), (b) (7)(C) never provided one to WHI, despite the numerous requests by WHI. WHI had called the employee that (b) (6), (b) (7)(C) mentioned that would give favor statement (b) (6), (b) (7)(C) witness), but that employee has declined to be interviewed.

On the other hand, the employer has provided some documents that show there were issues with (b) (6), (b) (7)(C) performance since beginning of 2014, and employer has been consulting with (b) (6), (b) (7)(C) about (b) (6), (b) (7)(C) poor performance in the past 10 months prior to firing (b) (6), (b) (7)(C) (exh. D-4 to D-9)

Disposition:

A conference was held on Jan13, 2015 at the employer's office to discuss the findings and regulations. In attendance were Mr. Brain Read, Total Compensation Director, and Ms. Lisa Morten, HR Director, and WHI (b) (6), (b) (7)(C). The FLSNM and FLSA regulations were reviewed thoroughly with emphasis given to Nursing Mothers and retaliations.

WHI discussed the nursing mothers' break time and space issues. Employers stated that they knew and understand the Nursing Mothers laws very well, and though they're in compliance with the law. WHI informed them that some nursing mothers were not able to take the break to express milk when they needed to, due to the nature of their work duty. WHI also informed them that the nursing mothers didn't have privacy when they're expressing milk because the door doesn't have lock and no window covers. Employers explained that (b) (6), (b) (7)(C) only put a small sticker note on the door, so maybe the other employees didn't see that and just pop-in. Employers were advised that it didn't matter how big or small the note was, employees would have seen the note when they stood in front of the door, and that the employer need to take other steps to make sure the room is "free from intrusion". Employers were also advised that nursing mothers should be allowed to take the break to express milk whenever / as often as they need to, and as long as they need to, and the frequency and duration of the breaks that nursing mothers need will vary. Employers stated that they'd try to improve the privacy of the room for the nursing mothers and would give them the break time when they need it.

Regarding the retaliation (b) (7)(E) employers explained that they took retaliation very seriously, and that they had conducted their own investigation. Employers stated that the employee was terminated due to (b) (6), (b) (7)(C) unprofessional treatment of patients, non-compliance with the company rule/requirement/policy, and improper/unacceptable behavior toward the patients. Employers stated that they would provide some documents regarding this issue to WHI. The unpaid lunch break was discussed. Employers explained that they understood the employees might not be able to enjoy the lunch break without any interruption, but they'd told employees frequently that they needed to notify the supervisors and adjust the time sheets if they didn't take break. Employers stated that they're not happy hearing that some employees still didn't do that. Employers assured that they'd emphasize the importance of break and the company's policy regarding break in the mandatory meetings/education classes again.

Jan16, 2015, employer provide a copy of the termination letter and other documents to support their claim of non-retaliation. WHI requested more documents or information. (exh. D-4, D-6 to D-9)

Jan 29, 2015, (b) (6), (b) (7)(C) contacted the office and stated that (b) (6) had hired an attorney and going to file a law suit against the employer.

Feb4, 2015, employer provide timeline / summary of (b) (6), (b) (7)(C) performance issues. (exh. D-5)

Feb 6, 2015, WHI contacted employer, Ms. Lisa Morten, and informed her that the investigation had been completed, and reiterated the regulations regarding nursing mothers and the lunch break issue. Ms. Morten informed WHI that they had made a big sign that nursing mothers can hang it on the door when they're expressing milk, and she was sure no one would just pop-in again. Ms. Lisa Morten also assured that they would be in compliance with other applicable labor laws.

The employer was advised of the 16(b) and the possibility of the CMP. The complainant was notified of the result on Feb 6, 2015.

Publication provided: MW Poster, WH1282(HRG), WH1261(RK), WH1262(OT), WH1281(541 Exemptions), WH1312(HW), WH1330(CL), FS28D, FS73, FS44.

Recommendation:

I recommend this file be administratively closed.

Send correspondence to:

Overlake Hospital Medical Center
HR Dept.
1035 116th Ave NE
Bellevue, WA 98004

(b) (6), (b) (7)(C)

Wage Hour Investigator

X: _____

WHISARD Compliance Action Report

U.S. Department of Labor Wage and Hour Division

Case ID: 1775935 Originating District: Seattle District Office
Local Filing Number: 2016-323-07640 Investigating District: Seattle District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 11/05/2015
Assignment Date: 11/05/2015

Employer Information

Trade Name: Alamo Rent-A-Car Legal Name: EAN Holdings LLC
Address: 3150 S 160th Street, Ste. 509 EIN: 26-4086616
County: King
NAICS Code: 532111
Seattle, WA 98188 No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 07/01/2015 BNPI:
To: 12/31/2015 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

(b) (7)(E) not provided space to express milk. FLSANM cov: 3sa1 + 50 ees. EE not 541 exempt. Violation: 207r1b. EE told to use bathroom or used rental cars. Er had space, managers did not know it. FC w HR Jennifer Andriesen on 2/26/16. ATC, Pubs Prov: FS 44, 73, HRG

WHI Signature: _____ Date: 03/07/2016

Reviewed By: _____ Date: _____

Enterprise Holdings
dba Alamo Rent a Car
3150 S 160th St Ste 507
Seatac, WA 98188
Contact: Jennifer Andriesen, HR
206-433-5501
EIN: 26-4086616
Case ID: 1775935

Fair Labor Standards Act Nursing Mothers

This investigation was initiated (b) (7)(E) (b) (6), (b) (7)(C) (b) (7)(E) the employer had not provided a space in order for (b) (6) to express milk during (b) (6) work day and harassed (b) (6) about expressing milk at work. (b) (7)(E) in part and the employer agreed to future compliance.

The investigation was limited to the Nursing Mothers provision of Section 7 under the FLSA.

Prior Investigative History

There have been prior investigations of this establishment, but none in the last 5 years.

MODO

The business is located in Seatac, WA, but the headquarters is in Ft Lauderdale, FL and the Miami, FL DO is the MODO. (See D-1)

Coverage

Alamo Rent-A- Car is part of a larger enterprise whose main business purpose is to rent cars for personal as well as business use. The cars are driven across state lines on a regular and recurring basis and each

rental requires an employee accepting payment by credit card. Rentals are routinely reserved over the phone and online. The company grosses well over \$500,000 per year and has hundreds of employees engaged in interstate commerce, more than 50 alone at this location. (See Ex C-1a) All employees are covered under §3(s)(1)(a) of the FLSA on an enterprise basis. Since there are more than 50 employees, the coverage includes §207(r); the nursing mothers provision of the FLSA. (See Ex C-1a)

The current investigation is limited to §207(r) of the FLSA and (b) (6), (b) (7)(C) in question is a non-exempt employee covered by §207(r).

The present investigation covers the period July, 2015 through December 31, 2015.

Exemptions

None applicable.

Status of Compliance

207(r)(1)(A) – Failure to provide adequate break time (frequency, duration, or complete denial):

No violations found. (b) (6), (b) (7)(C) was given adequate break time to express (b) (6), (b) (7)(C) breast milk. (See Ex B-1a) (b) (6), (b) (7)(C) (b) (7)(E) (b) (6), (b) (7)(C) was harassed by management for clocking in and then immediately going to pump, but the regulations do not require that employers change employees' shifts in order to accommodate their pumping schedule; the regulations only encourage employers work with the employee when needed. After more discussion, (b) (6), (b) (7)(C) admitted that at the time, (b) (6), (b) (7)(C) was worried about losing (b) (6), (b) (7)(C) job (due to multiple tardies) and that (b) (6), (b) (7)(C) didn't want to cause any problems by going to human resources or another manager about pumping at the beginning of (b) (6), (b) (7)(C) shift. (See Ex D-2)

207(r)(1)(B)- Failure to provide functional space (bathroom not permissible, space not free from intrusion, not shielded from view):

Violation found. (b) (6), (b) (7)(C) did not have a private space where (b) (6), (b) (7)(C) could express (b) (6), (b) (7)(C) milk free from intrusion. (b) (6), (b) (7)(C) had been told by (b) (6), (b) (7)(C) manager to use the public restroom. (See B- 1a, c, D-2) (b) (6), (b) (7)(C) also used empty rental cars in order to express milk. (See Ex B-1a, c, D-2)

The location where (b) (6), (b) (7)(C) worked did have a space that (b) (6), (b) (7)(C) could have used to express milk. (See Ex C- 1b) At the initial conference, employer representative Jennifer Andriesen provided WHI (b) (6), (b) (7)(C) with a tour of the establishment and showed (b) (6), (b) (7)(C) the spaces available for women to use to express milk. There is not a designated space just for women, but there are several office spaces that are available at any time and offer privacy. However, (b) (6), (b) (7)(C) direct supervisors did not tell (b) (6), (b) (7)(C) there were available spaces when (b) (6), (b) (7)(C) inquired and (b) (6), (b) (7)(C) was specifically told to use the restroom, which is also open to the general public. (See Ex B-1a, D-2) (b) (6), (b) (7)(C) was specifically told to not use the rental cars as it was making the other employees uncomfortable. (See Ex B-1a) WHI (b) (6), (b) (7)(C) spoke to two of (b) (6), (b) (7)(C) managers and neither remembered (b) (6), (b) (7)(C) asking for space or there being a problem, but both thought the bathroom or the women's locker room were acceptable places for expressing milk and one didn't know there was any private space available. (See Exs D- 3, 4)

207(r)(2) – Compensation for break time: No violations found. The employer paid (b) (6), (b) (7)(C) for all time expressing milk. (See Ex B-1a)

207(r)(3) – Undue Hardship: No violations. The employer has many employees at or near the location where the employee works and made no objection to its obligation to comply with the law.

Disposition

WHI (b) (6), (b) (7)(C) conducted a final conference via telephone with Jennifer Andriesen on 2/26/16. WHI (b) (6), (b) (7)(C) explained that despite there being space available, (b) (6), (b) (7)(C) direct supervisors did not know that there was a private space easily accessible to (b) (6), (b) (7)(C) for expressing milk. Based on the fact that both managers WHI (b) (6), (b) (7)(C) spoke with indicated that a bathroom was an appropriate space, there was a very good chance that (b) (6), (b) (7)(C) (b) (7)(E) was true; that (b) (6), (b) (7)(C) had been told to use the bathroom to express milk. Ms. Andriesen stated that the company had believed it was always in compliance and that it was a surprise that (b) (6), (b) (7)(C) had any problems because she had been accommodated throughout her pregnancy and was quite comfortable coming to Ms. Andriesen herself. Nonetheless, the company immediately took action after the initial conference and made sure all of the managers were aware that there was private space available to any nursing mother.

Ms. Andriesen stated that no one (including (b) (6), (b) (7)(C) or management) came to her about (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) needing a space or she would have granted her immediate access to a space. The company has a generous maternity leave program and keeps in touch with returning mothers in order for them to stay in the workforce. Ms. Andriesen also agreed to incorporate the space locations in the information she provides to mothers returning to work. Prior to the investigation, Ms. Andriesen said that they relied on the mothers to come forward if they needed a space or had any trouble. In order to avoid any further issues, the company is now automatically providing the information to all returning mothers.

(b) (6), (b) (7)(C) notified on March 7, 2016.

Publications Provided

Fact sheets 44, HRG, 73

Recommendation

Recommend close administratively (b) (7)(E) .

Further Correspondence

Ms. Jennifer Andriesen
Human Resource Director
3150 S 160th St Set 507
SeaTac, WA 98188
206-433-5501

WHISARD Compliance Action Report

U.S. Department of Labor Wage and Hour Division

Case ID: 1793176 Originating District: Sacramento District Office
Local Filing Number: 2016-302-07160 Investigating District: Sacramento District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 05/31/2016
Assignment Date: 05/31/2016

Employer Information

Trade Name: ProTransport-1 Legal Name: ProTransport-1, LLC
Address: 2700 Mercantile Drive, Suite 900 EIN: 68-0461114
County: Sacramento
NAICS Code: 621910
Rancho Cordova, CA95742 No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 05/06/2016 BNPI: 0
To: 05/31/2016 Reinvestigation: ☒
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: ☐ Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

WHISARD Compliance Action Report

Conclusions & Recommendations:

Follow-up case due to addtnl cntct frm ER & (b) (6), (b) (7)(C) (see Case ID #1787666). Enterp cov. (b) (7)(E) (b) (6), (b) (7)(C) (b) (7)(E) retaliation (chnge frm 8 AM to 8 PM shift to 12 PM to 12 AM shift), failure to prvde reas brk time due to new shift, & failure to ensure privacy of NM rm. Dscsd w/ Dir of Benefits&Payroll Christie Undercoffler & HR Dir Holly Ballard. ER discsd (b) (7)(E) retaliation & prvd info re: why shift ws chnged. ER agrd to chnge (b) (6), (b) (7)(C) shift & prvide sign fr NM room. HRG emaild to ER. See Memo in file.

WHI Signature: _____ Date: 06/03/2016

Reviewed By: _____ Date: _____

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1797009 Originating District: Seattle District Office
Local Filing Number: 2016-323-07946 Investigating District: Seattle District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 07/18/2016
Assignment Date: 07/18/2016

Employer Information

Trade Name: Albertsons Legal Name: Albertsons Companies
Address: 6727 Evergreen Way EIN: 82-0184434
County: Snohomish
NAICS Code: 44511
Everett, WA 98203 No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 06/01/2016 BNPI:
To: 07/31/2016 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☐
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

FLSANM (b) (7)(E) FLSA cov: 3s1a. EE cov, not Sec7 exempt, baby born<12 mos ago. Viol: ER not providing adequate space to provide milk. FC with Stuart Marcus, DIR of HR, on 8/4/16. ATC. Pubs Prov: HRG, FS 44, 73, Fed reg 80075

WHI Signature: _____ Date: 08/04/2016

Reviewed By: _____ Date: _____

Albertsons Companies
dba Albertsons
6727 Evergreen Way
Everett, WA 98203
Contact: Stuart Marcus, Director of Human Resources
425-201-6424
EIN: 82-0184434
Case ID: 1797009

Fair Labor Standards Act Nursing Mothers

This investigation was initiated (b) (7)(E) (b) (6), (b) (7)(C) (b) (7)(E) the employer was not providing a space in order for (b) (6), (b) (7)(C) to express milk during (b) (6), (b) (7)(C) work day. (b) (7)(C) and the company agreed to make a space available when needed.

The investigation was limited to the Nursing Mothers provision of Section 7 under the FLSA.

Prior Investigative History

There have been many previous investigations of the company, but there has been only one in the Seattle area within the last 5 years:

Case ID: 1740020. 9/2014. Everett, WA location. (b) (7)(E) FMLA. No violations found. (See D-5)

MODO

The business is located in Everett, WA, but the headquarters is in Boise, ID. Portland DO is the MODO. (See D-1)

Coverage

Albertsons is a large grocery retail chain that has grocery stores all over the country. The company grosses well over \$500,000 per year and has hundreds of employees engaged in interstate commerce because they accept and run credit cards as well as handle goods that have been shipped across state lines.

All employees are covered under §3(s)(1)(a) of the FLSA on an enterprise basis. Since there are more than 50 employees, the coverage includes §207(r); the nursing mothers provision of the FLSA. (See Ex C-1b)

The current investigation is limited to §207(r) of the FLSA and (b) (6), (b) (7)(C) in question is a non-exempt employee covered by §207(r).

The present investigation covers the period June 1, 2016 through July 31, 2016.

Exemptions

None claimed and none granted.

Status of Compliance

207(r)(1)(A) – Failure to provide adequate break time (frequency, duration, or complete denial):

No violations found. (b) (6), (b) (7)(C) was given adequate break time to express (b) (6), (b) (7)(C) breast milk. (b) (6), (b) (7)(C) uses (b) (6), (b) (7)(C) regular 15 mins break time and is required to submit time slips for all extra time so the extra time is deducted and unpaid. (See Ex B-1)

207(r)(1)(B)- Failure to provide functional space (bathroom not permissible, space not free from intrusion, not shielded from view): Violation found. (b) (6), (b) (7)(C) does not have a private space where (b) (6), (b) (7)(C) can express (b) (6), (b) (7)(C) milk free from intrusion. The manager had initially told (b) (6), (b) (7)(C) could use the manager's office. It is the only private space that is free from intrusion. However, it is also contains the main store computers and management needs access to it often. During busy times, (b) (6), (b) (7)(C) was told (b) (6), (b) (7)(C) could not use the office and had to use other space, including a dirty server room with no extra electrical outlets and a public area outside of the manager's office that does not have doors and is accessible by every employee. (See Ex B-1)

Not all managers limited (b) (6), (b) (7)(C) access to the office, but at least three managers did on a regular basis. (See Ex B-1) (b) (6), (b) (7)(C) also stated that those managers as well as (b) (6), (b) (7)(C) direct supervisor complained that it was taking (b) (6), (b) (7)(C) too long to pump and harassed (b) (6), (b) (7)(C) about submitting (b) (6), (b) (7)(C) time slips so (b) (6), (b) (7)(C) wouldn't be

paid for the time it took to pump outside (b) (6), (b) (7)(C) regular break period. (See Ex B-1) (b) (6), (b) (7)(C) said (b) (6), (b) (7)(C) always submitted (b) (6), (b) (7)(C) time slips and felt like the constant reminder to do so every single time (b) (6), (b) (7)(C) went to express milk was harassing and a way to discourage (b) (6), (b) (7)(C) from doing it. (See Ex B-1) The managers' behavior led to the employee quitting (b) (6), (b) (7)(C) job and finding a new one.

At the initial conference, manager (b) (6), (b) (7)(C) pointed out another space that could be used for expressing milk if needed. It was a small conference room next to the pharmacy used by the pharmacist to consult with customers. It had a glass window on the door, but (b) (6), (b) (7)(C) stated the window could be covered up and used by mothers. (b) (6), (b) (7)(C) showed WHI (b) (6), (b) (7)(C) a server room used by the pharmacy, but stated that people weren't allowed in there for security reasons and that the door was always locked and only accessible by two people. (b) (6), (b) (7)(C) was not aware that (b) (6), (b) (7)(C) had used that room and did not think it was suitable for expressing milk. (See Ex C-1a)

207(r)(2) – Compensation for break time: No violations found. The employer paid (b) (6), (b) (7)(C) for all time expressing milk during regular scheduled break. (See Ex B-1) (b) (6), (b) (7)(C) was deducted for time spent beyond (b) (6), (b) (7)(C) 15 minute break period. (See Ex B-1)

207(r)(3) – Undue Hardship: No violations. The employer has hundreds of employees at or near the location where the employee works and made no objection to its obligation to comply with the law.

(b) (6), (b) (7)(C) was updated on July 17, 2016.

Disposition

WHI (b) (6), (b) (7)(C) conducted a final conference via telephone with Director of Human Resources Stuart Marcus on 8/4/2016. WHI (b) (6), (b) (7)(C) explained that the space being provided was not always available to (b) (6), (b) (7)(C) when (b) (6), (b) (7)(C) needed to express milk. WHI (b) (6), (b) (7)(C) requested the company policy be disseminated to all employees, especially management, so they would be aware of their responsibilities under the law. Mr. Marcus disagreed with the finding and did not think any manager would have denied the employee access to a suitable room for expressing milk. WHI (b) (6), (b) (7)(C) explained that the employee (b) (7)(E) it happened on occasion and was occurring more frequently and since there was no other suitable place for expressing milk, it was a violation to deny (b) (6), (b) (7)(C) use of the manager's office. Mr. Marcus agreed to disseminate the company policy to all employees so everyone was aware of their rights and

responsibilities. While (b) (6), (b) (7)(C) reminded Mr. Marcus that even the human resource representatives (b) (6), (b) (7)(C) spoke with did not believe there was a company policy regarding nursing mothers and that no one at the store was aware of it. He stated that he understood and as part of the merger between Albertsons and Safeway, many of the employee policies and handbooks were being updated and provided to all of the employees; this policy included.

Publications Provided

HRG, Fact sheets 44, 73, Federal Reg 80073 (Nursing Mothers)

Recommendation

Recommend close administratively (b) (7)(E) .

Further Correspondence

Stuart Marcus
Director of Human Resources Attorney
6727 Evergreen Way
Everett, WA 98203
425-201-6424

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1801655 Originating District: Sacramento District Office
Local Filing Number: 2016-302-07291 Investigating District: Sacramento District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 09/13/2016
Assignment Date: 09/13/2016

Employer Information

Trade Name: ProTransport-1 Legal Name: ProTransport-1, LLC
Address: 191 Lathrop Way EIN: 68-0461114
County: Sacramento
NAICS Code: 621910
Sacramento, CA95815 No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 06/01/2016 BNPI: 0
To: 09/12/2016 Reinvestigation: ☒
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Compliance (no violations found) Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
No Violation found for this act / Compliance (no violations found)					\$0.00	\$0.00	

WHISARD Compliance Action Report

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
No Violation Found for this Act / Compliance (no violations found)					\$0.00	\$0.00	
FLSNM Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

(b) (7)(E) See CaseIDs#1787666 & 1793176. COV: FLSA 3(s)(1)(A)>\$500k&interst cmm. EX: N/A. SOC: EMT
 (b) (6), (b) (7)(C) (b) (7)(E) ER discouraging (b) (6), (b) (7)(E) frm bidding on certain shifts & on 09/12, denied (b) (6), (b) (7)(E) a break to express milk.
 ER & (b) (6), (b) (7)(E) prvd timeline & docs re: (b) (7)(E) No vios found. DISP: FC 09/28/16 via phone w/ HR Holly Ballard & Dir of Benefits Christie Undercoffler. ATFC-will nt prohib nursing mothrs frm any shifts & will tlk to mgrs & disptchrs to ensure understndng of FLSA prov & ECA. Pubs: See nar.

WHI Signature: _____ Date: 09/30/2016

Reviewed By: _____ Date: _____

Point of Contact:
Ms. Christie Undercoffler, Director of Benefits and Payroll
720 Portal Street
Cotati, CA 94931
(707) 992-1231

Reason for Investigation: This investigation was initiated by (b) (7)(E). The investigation was limited to (b) (7)(E). (b) (6), (b) (7)(C) (b) (7)(E) employer was discouraging (b) (6), (b) (7)(C) from working Critical Care Transport (CCT) shifts and had not accommodated (b) (6), (b) (7)(C) request to express milk on 09/12/2016. (b) (6), (b) (7)(C) had previously contacted the Wage and Hour Division regarding (b) (6), (b) (7)(C) rights as a nursing mother. (*See Case IDs #1787666 and 1793176 and Exhibits D-19 through D-20*) On 09/12/2016, employer ProTransport-1 also contacted WHI for clarification on the nursing mother provisions of the Fair Labor Standards Act. (*See Case Diary & Exhibit D-1*)

Due to the nature of this investigation, the initial conference from Case ID #1787666 was used for the following information:

Page 1

Ohio. *(See Exhibit D-19)* As such, the firm is enterprise covered under Section 203(s)(1)(A) of the Fair Labor Standards Act (FLSA).

Period of Investigation: 06/01/2016 to 09/12/2016.

Prior History: This is the first investigation of the subject location in Sacramento, CA. ProTransport-1 as an enterprise had one prior investigation under the FLSA and two prior investigations (including a (b) (7)(E) under the FLSANM provisions. No violations were disclosed. *(See Case IDs #1607090, 1787666, 1793176, and Exhibits D-19 through D-20)*

MODO: San Francisco, CA District Office. ProTransport-1's headquarters are located at 566, 706, and 720 Portal Street in Cotati, CA. *(See Exhibit C-1)* The case was associated with the MODO. (b) (7)(E) *(See MODO ID #41475 and Exhibit D-21)*

EXEMPTIONS:

None claimed. (b) (6), (b) (7)(C) is an hourly, non-exempt employee and is subject to Section 207 of the Act. *(See Exhibits B-1 and C-1)* (b) (6), (b) (7)(C) is therefore entitled to protection under the nursing mother provisions of Section 207(r).

STATUS OF COMPLIANCE:

(b) (6), (b) (7)(C) (b) (7)(E) (b) (6), (b) (7)(C) is a nursing mother who needs to express milk for (b) (6) child. It is less than 1 year after the child's birth. *(See Exhibit B-1)*

Section 207(r)(1)(A) & (B) – Reasonable Break Time & Place, Other than a Bathroom, Shielded from View and Free from Intrusion: No violation found.

(b) (6), (b) (7)(C) is an EMT-Basic whose primary station recently changed from Rancho Cordova, CA to Sacramento, CA.

Per the employer and (b) (6), (b) (7)(C), ProTransport-1 provides 3 levels of service:

- Critical Care Transport (CCT), which is the highest level of service and requires 2 EMTs and a nurse
- Advanced Life Support (ALS), which is the middle level of service and requires 1 paramedic and 1 EMT or 2 paramedics
- Basic Life Support (BLS), which is the lowest level of service and requires 2 EMTs

(b) (6), (b) (7)(C) currently works on a CCT shift. (b) (6) regular duties involve driving an ambulance with a partner

and a nurse to and from various locations to perform typically nonemergency, inter-facility transfers/wait-and-returns and to respond to “ASAP” pickups. *(See Exhibits B-1 and C-1)*

(b) (6), (b) (7)(C) did not dispute that (b) (6), (b) (7)(C) had been provided a functional space to express milk.

However, (b) (6), (b) (7)(C) (b) (7)(E) the following:

(b) (6), (b) (7)(C) bid on a CCT shift while on leave. (b) (6), (b) (7)(C) returned to work and started this CCT shift. (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) employer was discouraging (b) (6), (b) (7)(C) from working this CCT shift. (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) employer said the Wage & Hour Division had told them that if (b) (6), (b) (7)(C) picked up a CCT shift, they didn't have to accommodate (b) (6), (b) (7)(C) requests to express milk. *(See Exhibit B-1)*

The employer stated that after the second investigation, they discussed shifts with (b) (6), (b) (7)(C) and told (b) (6), (b) (7)(C) that accommodation on CCT and ALS shifts would decrease. The employer forwarded an email to WHI dated 06/01/2016 sent to (b) (6), (b) (7)(C). In this email, the employer stated, “We gave you the choice of staying on the CCT dedicated unit with the understanding that the accommodation decreases on this type of shift. We discussed this issue with DOL yesterday, and they agree that the accommodation is best on a BLS unit versus a higher level of service.” *(See Exhibits D-2 and D-7)*

WHI questioned the meaning of “accommodation decreases”, as well as their statement that “[DOL agrees] that the accommodation is best on a BLS unit versus a higher level of service”. WHI reiterated the findings from the previous investigation. *(See Case ID #1793176 and ID #1793176's Case Diary)* The employer stated that they had not prohibited nursing mothers from working CCT or ALS shifts.

On 09/15/2016, the employer emailed a letter explaining in detail the meaning of “accommodation decreases”. Per this letter, if a nursing mother EMT chose a CCT or ALS shift, it would be more difficult to accommodate her requests to express milk due to the number of available units and call pick-up time flexibility. The employer discussed the reasons why an ambulance could not stop mid-patient transport and further stated that they were attempting to accommodate nursing mothers on these shifts in the following ways: *(See Exhibit D-3)*

“We make (b) (6), (b) (7)(C) unit the last CCT unit to receive a call when calls come out. We allow (b) (6), (b) (7)(C) to leave (b) (6), (b) (7)(C) post to pump in a designated, private room whereas other units have to stay at post because that keeps them in close proximity to the facilities where our ambulance calls are coming from. And we allow (b) (6), (b) (7)(C) to pick which post benefits her the most [...]”

The employer reiterated that they had not denied (b) (6), (b) (7)(C) bid for the CCT shift, they were

accommodating (b) (6), within the confines of the shifts' requirements, and (b) (6), (b) (7)(C) had been informed of the requirements and limitations of the CCT shift. (b) (6), (b) (7)(C) did not dispute these claims. No violation was disclosed. *(See Exhibits B-1 and D-3)*

On 09/12/2016, the employer had not accommodated (b) (6), (b) (7)(C) request to express milk.

(b) (6), (b) (7)(C) stated that on 09/12/2016, (b) (6), expressed milk approximately 2.25 hours past (b) (6), scheduled time due to being on a long-distance transport. *(See Exhibit B-1)* The employer acknowledged that (b) (6), (b) (7)(C) had expressed concern about expressing milk late. *(See Exhibit D-6)* The employer and (b) (6), (b) (7)(C) provided timelines of what occurred prior to and on 09/12/2016. *(See Exhibits D-3, D-6, and D-7 through D-18)*

(b) (6), (b) (7)(C) stated that since (b) (6), was on a CCT shift, (b) (6), understood and was willing to shift (b) (6), break times for long distance "ASAP" calls. (b) (6), stated that (b) (6), believed that the 09/12/2016 call was scheduled and not "ASAP", and therefore (b) (6), should have been accommodated. (b) (6), further stated that on 09/12/2016, the dispatcher was new. (b) (6), stated that dispatch had previously accommodated (b) (6), on long distance calls by moving the nurse to a different ambulance and having (b) (6), run scheduled BLS calls. On 09/22/2016, (b) (6), stated that the incident on 09/12/2016 had not reoccurred because (b) (6), was now working with (b) (6), usual dispatcher. *(See Exhibit B-1)*

The employer stated that the call was "ASAP", and there were no other units available to take the call. The employer stated that (b) (6), (b) (7)(C) had been allowed to express milk prior to leaving for the call and once the ambulance reached the hospital. *(See Exhibit D-6)* Upon review of the evidence provided, it was decided that in this case, the employer had provided the required "reasonable break time". No violation was disclosed.

DISPOSITION:

On 09/28/2016, a final conference was conducted via telephone. Present on behalf of the employer were Human Resources Director Ms. Holly Ballard and Director of Benefits and Payroll Ms. Christie Undercoffler. Present on behalf of the Department was the WHI. Final conference notes were taken. *(See Exhibit D-22)*

WHI discussed the employer's responsibilities under the FLSA Nursing Mother provisions and the findings of the investigation as it related to (b) (6), (b) (7)(C).

WHI discussed (b) (7)(E). The employer stated the following:

“As you can see, we've allowed (b) (6), to bid for CCT shifts. For September 12th, we have it in our system when the call came in, and it was a request for an ASAP. For a scheduled call, we would know early in that morning or the day before if something is scheduled. There is definitive information indicating that it was not a scheduled call.”

The employer stated that they understood that ProTransport-1 could not blanket prohibit nursing mothers from bidding on CCT or ALS shifts. The employer agreed to continue to comply.

The employer further stated that they would “reiterate to our dispatchers and managers [that] we need to exhaust all ways to accommodate nursing mothers on CCT and ALS shifts. For BLS, it's a lot easier to accommodate them.”

The employer agreed to future compliance with the terms of the previously-signed Enhanced Compliance Agreement and the provisions of the Fair Labor Standards Act.

(b) (6), (b) (7)(C) Notification:

(b) (6), (b) (7)(C) was notified of the results of the investigation on 09/28/2016 via telephone.

Publications:

HRG and Fact Sheets #28D, 44, 73, and 77A were provided on 03/28/2016 to Ms. Holly Ballard, Mr. Devon Luce, Mr. David Ott, and Ms. Nicole Forde at the Rancho Cordova, CA establishment. *(See Case ID #1787666)*

The following publications were mailed to Ms. Holly Ballard on 09/30/2016: HRG. Fact Sheets #13, 14, 17A, 21, 22, 23, 28, 28D, 43, 44, and 73.

Recommendation:

It is recommended that the case be closed with no further action.

(b) (6), (b) (7)(C)

Wage & Hour Investigator
09/30/2016

WHISARD Compliance Action Report

U.S. Department of Labor Wage and Hour Division

Case ID: 1802769 Originating District: Seattle District Office
Local Filing Number: 2016-323-08032 Investigating District: Seattle District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 09/27/2016
Assignment Date: 09/28/2016

Employer Information

Trade Name: MultiCare Medical Center
Address: 315 MLK Jr Way

Tacoma, WA98405

Legal Name: MultiCare Health Systems
EIN: 91-1352172
County: Pierce
NAICS Code: 622110
No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 10/07/2014
To: 10/06/2016
Investigation Type: (b) (7)(E)
Investigation Tool: Limited Investigation
Compliance Status: Agree to Comply

BNPI:
Reinvestigation: ☐
Recurring Violation: ☐
Future Compliance Agreed: ☒
Involved in AG: ☐

Recommended Action:

BWFS: ☐
CMP: ☐
Litigation: ☐
Civil Action: ☐
Criminal Action: ☐
Submit For Opinion: ☐

RO/NO Review: ☐
Follow Up Investigation: ☐
Other Action: ☐
Denial of Future Certificate: ☐
BW Payment Deadline:
Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
No Violation found for this act / Compliance (no violations found)					\$0.00	\$0.00	

WHISARD Compliance Action Report

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
No Violation Found for this Act / Agree to Comply					\$0.00	\$0.00	
FLSNM Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

26.25 Hrs. FLSANM (b) (7)(E) FLSA cov: 3(s)(1)(a). EE cov, not Sec7 exempt, baby born<12 mos ago. Viol: ER not providing adequate breaktime/space to provide milk. FC with Laura Edwards and Julie Richards, HR Reps, on 12/29/16. ATC. (b) notified 12/12/16 of disp. Pubs Prov: HRG, FS 44, 73, Fed reg 80075 REC: concl in WHIS

WHI Signature: _____ Date: 01/12/2017

Reviewed By: _____ Date: _____

MultiCare Health Systems
dba MultiCare Medical Center
P.O. Box 5299. MS: 603-1-HR I
Tacoma, WA 98402
Contact: Laura, Employee and Labor Relations Consultant
lledwards@multicare.org
253-403-4699

Fair Labor Standards Act Nursing Mothers

This investigation was initiated (b) (7)(E) (b) (6), (b) (7)(C) (b) (7)(E) the employer was not providing a space in order for (b) (6), (b) (7)(C) to express milk during (b) (6), (b) (7)(C) work day. (b) (7)(E) the company agreed to make a space available when needed.

The investigation was limited to the Nursing Mothers provision of Section 7 under the FLSA.

Prior Investigative History

There have been 3 previous investigations of the company.

- 1463895-FMLA termination (b) (7)(E) Violation (b) (7)(E) resulting in one employee due \$19,894.91 in gross liability.
- 1480672- FMLA termination (b) (7)(E) Violation (b) (7)(E).
- 295197- 541 misclassification (b) (7)(E) Violation (b) (7)(E) resulting in one employee due \$199 in back wages.

(Exhibit D-2)

MODO

The firm is a multi-unit employer. The business is located and headquartered in Tacoma, WA. SDO is the MODO. A MODO request was submitted on 1/11/17 and associated on 1/12/17 .
(Exhibit D-1)

Coverage

MultiCare Medical Center is a non-profit hospital that is part of MultiCare Health Systems. MultiCare Health Systems was incorporated in 1986. MultiCare Health Systems includes about 100-150 additional sites that include various hospitals, urgent care centers and physician offices around King and Pierce counties. MultiCare Health Systems has approximately (b) (4) employees. MultiCare Medical Center has over (b) (4) employees. MultiCare Medical Center encompasses Mary Bridge Children's Hospital, Tacoma General Hospital, Baker Center and several other smaller physician offices. This unit is located between 3rd and 6th blocks of MLK Way in Tacoma. It includes several buildings and departments are located in multiple locations and is impossible to divide into one entity for investigation purposes. All employees are covered under §3(s)(1)(b) of the FLSA on an enterprise basis. Since there are more than 50 employees, the coverage includes §207(r); the nursing mothers provision of the FLSA. (Exhibit C-1)

The current investigation is limited to §207(r) of the FLSA and (b) (6), (b) (7)(C) in question is a non-exempt employee covered by §207(r).

The investigation period is October 7, 2016 through October 6, 2016.

Exemptions

This was a limited investigation and no exemptions were applicable to (b) (6), (b) (7)(C).

Status of Compliance

207(r)(1)(A) – Failure to provide adequate break time (frequency, duration, or complete denial): Violations found.

(b) (6), (b) (7)(C) uses (b) (6), (b) regular 15 mins break time and 30 minute meal time to express milk. (Exhibit B-1, D-4)

(b) (6), (b) (7)(C) said if (b) (6), (b) was unable to take (b) (6), (b) break and express milk due to (b) (6), (b) department's staffing levels not being met to always provide break relief, (b) (6), (b) would submit (b) (6), (b)

time sheet to reflect no break given. (b) (6), (b) (7)(C) was unofficially counseled by (b) (6), (b) (7)(C) supervisor to not do that even though, that was a violation of hospital and union policy. (Exhibit B-1, D-4) The managers' behavior led to the employee filing a grievance. The grievance does not address issues with not expressing milk.

A tour of the establishment showed that (b) (6), (b) (7)(C) would not have sufficient enough time to express milk. (b) (6), (b) (7)(C) would have to walk from (b) (6), (b) (7)(C) department to the nursing mother's room, determine the room was unavailable, walk across the street and find an available room, express milk and walk back to (b) (6), (b) (7)(C) department.

207(r)(1)(B)- Failure to provide functional space (bathroom not permissible, space not free from intrusion, not shielded from view): Violations found.

(b) (6), (b) (7)(C) does not have a private space where (b) (6), (b) (7)(C) can express her milk free from intrusion all of the time. The department manager had told (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) could use the designated room for nursing mothers on her paid/unpaid break time. The room is divided into 2 spaces with a sliding curtain. The nursing room has a sink, a nursing pump for each side, and a recliner. Access is available for any employee with a badge. There is no sign in/out sheet for the room that has been designated to serve as the only primary space for over (b) (4) employees.

The nursing rooms are available 24 hours a day. It is located centrally in the middle of the hospital where it can take 5-10 minutes to reach. Without anyway to schedule or reserve the space, an employee only knows that room is not available when (b) (6), (b) (7)(C) walks to the room and both spaces are full. (b) (6), (b) (7)(C) has seen at least 7 women that (b) (6), (b) (7)(C) shares the space with at the same times (b) (6), (b) (7)(C) uses the space. (b) (6), (b) (7)(C) (b) (7)(E) the space is only available about 50% of the time. If any additional break time is used, employees are required to submit time slips for all additional time so the extra time is can be deducted and unpaid. However, no instances of deductions were found. If there was not sufficient space, (b) (6), (b) (7)(C) claims, (b) (6), (b) (7)(C) could not pump.

(b) (6), (b) (7)(C) asked the Human Resources Department for an alternate space and (b) (6), (b) (7)(C) was told space was available across the street in Jackson Hall. Any space in that area would be about a 10 minute walk from where (b) (6), (b) (7)(C) is. The time that (b) (6), (b) (7)(C) took in access of 15

minutes would be deducted from (b) (6), (b) pay. (b) (6), (b) (7)(C) tried to use a vacant room in (b) (6), (b) unit and was sent an email that (b) (6), (b) (7)(C) was not allowed to use that room and was offered no other space. (Exhibit B-1)

The employer acknowledged that the workforce is about (b) women and about (b) (4) of female employees are of childbearing age. (b) (6), (b) (7)(C) also stated that those managers as well as (b) (6), (b) direct supervisor complained that it was taking (b) (6), (b) too long to pump and harassed (b) (6), (b) about submitting (b) (6), (b) time slips so she wouldn't be paid for the time it took to pump outside (b) (6), (b) regular break period. (Exhibit B-1)

At the initial conference, acting Employee and Labor Relations Consultant, Matthew Allore pointed out that he thought each department could possibly have available space to be used for expressing milk if needed, but each employee would have to work that out independently. At the time of the initial conference, there was no formal policy other than two spaces available for use. It was the responsibility of the employee to discuss any other possibilities for available space with her supervisor.

Mr. Allore stated that space is also available across the street in many of the spaces if anyone from the hospital needed space. Mr. Allore said that there is no formal breastfeeding mother's information that is relayed to employees returning from maternity leave. When Mr. Allore was asked about the other hospitals and other location's nursing mother policy and he said there is no policy that he is aware of and he would ensure that all locations had a policy in place with designated spaces.

207(r)(2) – Compensation for break time: No violations found. The employer paid (b) (6), (b) (b) (6), (b) (7)(C) for all time expressing milk during regular scheduled break. No deductions for time spent beyond (b) (6), (b) 15 minute break period were found.

207(r)(3) – Undue Hardship: No violations. The employer has over (b) (4) employees at or near the location where the employee works and made no objection to its obligation to comply with the law.

Disposition

WHIs (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) conducted a final conference with Labor and Employee Relations

Consultants Laura Edwards and Julie Richards on December 6, 2016 at the establishment. WHI (b) (6), (b) (7)(C) explained that the space being provided was not always available express milk for all employees. WHI (b) (6), (b) (7)(C) requested the company policy (including implementing a space reservation system) be established and disseminated to all employees, especially management, so they would be aware of their responsibilities under the law. WHI (b) (6), (b) (7)(C) recommended that the nursing mothers policy be disseminated with anyone who takes maternity leave (FMLA leave or not) to include all spaces available to express milk for that employee along with how to reserve the space.

WHI (b) (6), (b) (7)(C) discussed that if employees don't have sufficient designated space available during their break/meal time and the employee had to take time locate space available, any deductions that were made from employees pay in access of their unpaid break would be a violation of the act and subject to compensation.

This case was limited to the MultiCare Medical Center in Tacoma, however, in the initial conference, Mr. Allore acknowledged in the initial conference that this issue was probably a problem at many of the other locations, especially the various hospitals. He agreed the hospital would evaluate the nursing mother's program and have each department, all MultiCare locations, identify any available space where a nursing mother could express milk and additional alternate locations if the nursing mother's room was not available.

In the final conference on December 6, 2016 with Ms. Edwards and Ms. Richards, the violations of failure to provide adequate break time and failure to provide adequate space were discussed. Ms. Edwards claimed the violations occurred because they were not aware there was an issue with employees not being provided an alternate space if the nursing mother room was not available. Ms. Edwards stated that in discussion with the payroll department regarding obtaining any employee pay records where time was deducted for additional time taken, the department stated that although the deduction policy was discriminated to employees, that element of the policy is not enforced and no deductions have been made for mothers taken additional break time.

WHIs (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) discussed that employees are not taken breaks as needed due to lack of space and shift relief and the need for a room reservation system for nursing mothers. Additionally, included in the discussion was the need for all department heads and supervisors

to be properly trained on the requirements of 207(r).

Ms. Edwards and Ms. Richards agreed to future compliance and agreed to have the following implemented by the end of the first March 2017:

1. Train new managers concerning correct policy and procedures regarding expressing milk at work.
2. Create and distribute an education document to existing managers concerning correct policy and procedures regarding expressing milk at work.
3. Direct all managers to establish two locations on or near their work area (unit) to be used for expressing milk on or near their work area (unit).
4. Direct all managers to communicate with their employees concerning the locations for expressing milk on or near their work area (unit).
5. MultiCare will ask our third-party leave administrator, Matrix, to incorporate a flyer concerning expressing milk at MultiCare within the leave packets of our female staff taking maternity leave; and
6. Direct all managers to post an educational flyer on this topic (including identification of pumping rooms) in employee break areas.
7. Include educational content on the company website to make it accessible to all employees.

(b) (6), (b) (7)(C) was updated on December 12, 2016.

Publications Provided

HRG, Fact sheets 44, 73, FMLA, Federal Reg 80073 (Nursing Mothers)

Recommendation

Recommend close administratively (b) (7)(E) .

Further Correspondence

Laura Edwards
Employee and Labor Relations Consultant
P.O. Box 5299. MS: 603-1-HR

MultiCare Medical Center Case ID: 1802769

Tacoma, WA 98402
253-403-4699

WHI (b) (6), (b) (7)(C) 12/22/16

WHISARD Compliance Action Report

U.S. Department of Labor Wage and Hour Division

Case ID: 1809133 Originating District: Atlanta GA District Office
Local Filing Number: 2017-111-30423 Investigating District: Atlanta GA District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 12/14/2016
Assignment Date: 12/14/2016

Employer Information

Trade Name: Sheltering Arms Longview Center Legal Name: The Sheltering Arms
Address: 3833 Longview Dr. EIN: 58-0566236
County: Douglas
NAICS Code: 624410
Douglasville, GA30135 No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 09/01/2016 BNPI:
To: 12/20/2016 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☒
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	2	\$0.00	\$0.00	\$0.00	\$0.00	

Total Violations Under FLSNM: 4 \$0.00

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

31.25 Hrs (b) (7)(E) sec 207(r); Subject (b) (4) non-profit preschool with 15 locations throughout Atlanta, GA, cov asserted on an enterprise basis under sec 203(s)(1)(B); one EE cov under sec 207(r); ER in vio of sec 207(r) failed to provide nursing mother space & time to express milk, no back wages due employees were not deducted pay for breaks, FC held on 1/25/17 with HR Norman Hill and Monica Safford, ER agreed to make changes for compliance, FS 28D, 578, 785, 541,778 provided to ER

WHI Signature: _____ Date: 01/26/2017

Reviewed By: _____ Date: _____

FLSA NARRATIVE

Case id: 1809133

Case number: 2017-111-30423

Employer name: Sheltering Arms Longview

Legal Name: The Sheltering Arms, Inc.

Mailing address: 385 Centennial Olympic Park Dr NW Atlanta, GA 30313

Physical address: 3833 Longview Dr Douglasville, GA 30135

Contact person and title: Monica Safford (HR Generalist)

Phone number: 404-523-2845

Fax number: 470-399-5285

Federal id: 58-0566236

DUNS#: 010116937

Cage:

COVERAGE:

The subject firm above is a 501c3 nonprofit community early care and education center that prepares young children to succeed in school and that is accessible to all, regardless of family income. (See Exhibit(s): C-4, C-5-C-5-b).

The subject firm is governed by a board of directors. Members of the board are Michael Smith, Bennie Boswell, Jr, Elizabeth Richards, Jeff Kammerer, Pegui Mariduena, Martha Abbott-Shim, Kathy B. Ashe, Chad Aron, Laurie Benezra, W.J. Blane, Ashley brightwell, Gerry Carson, Helen Cease, Nathan Collett, Wendy Conover, Blair Curtis, Mark Dvorak, Anthony Embrey, Steve Floyd, Martha Taylor Greenway, Cathy Hilton, Stephanie James, Donna Lowry, Jill MacRae, Canditra McLemore, John Mears, Leona Rapelye, Lovette Russell, Caryn Schilstra, Anne Carson, Stiles Conrad, Robert Gunn, Jr, Janet Johnson, and Virginia Williams. (See Exhibit(s): C-3).

Subject firm operates at fifteen locations throughout the Metro Atlanta Region. The headquarters is located at 385 Centennial Olympic Park Dr NW Atlanta, GA 30313. The firm hires employees to work as administrative assistants, lead teachers, receptionists, and team leads. The firm has (b) (4) employees.

The firm is covered on an enterprise basis under Section 203(s)1(B) of the FLSA. The 1972 Amendments to the Fair Labor Standards Act specifically extend coverage of the Acts provisions to preschools and daycare centers as covered “enterprises,” regardless of whether public or private or operated for profit or not for profit. The firm collects fees for services provided on a sliding fee scale. Based on this information all employees are covered under an enterprise basis. (See Exhibit(s): C-1-C-2-b).

The Annual Dollar Volume of sales (ADV) for this enterprise has been:

2013: (b) (4)
2014: (b) (4)
2015: (b) (4)

(See Exhibit(s): C-3-C-5-t).

(b) (6), (b) (7)(C) met the definition of a “3(d) employer”. (b) (6), (b) (7)(C) hired and fired employees, set rates of pay, and assigned employees to work in different sections of the school. (b) (6), (b) (7)(C) is also responsible for the day to day operations of the subject firm. (See Exhibit(s): B-1-B-4-a, C-5-C-5-b).

The period of investigation is from 9/1/16 to 12/20/16.

The investigation was limited to compliance under section 207(r) for two employees, (b) (6), (b) (7)(C), and the period in question from 9/1/16 to 12/20/16.

A history search was performed in WHISARD and no previous case history was found.

The employer has fifteen locations. A MODO request was submitted due to the establishment having multiple locations throughout the state. MODO ID (b) (7) was established for The Sheltering Arms, Inc. located at 385 Centennial Olympic Dr NW Atlanta, GA 30313 (b) (7)(E) (Exhibit D-1-D-1e).

EXEMPTIONS:

Per aforementioned, exemptions were not explored.

STATUS OF COMPLIANCE:

This case was assigned as a (b) (7)(E) (b) (6), (b) (7)(C) (b) (7)(E) was not provided sufficient space and sufficient time to express breast milk. (See CA Information).

(b) (6), (b) (7)(C) (b) (7)(E)

(b) (6), (b) (7)(C) at Sheltering Arms Longview location. (b) (6), (b) (7)(C) has been employed with the firm since November 2014. (b) (6), (b) (7)(C) returned to work and explained to (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) would need time to express breast milk during work hours. Management granted the request to accommodate (b) (6), (b) (7)(C) by allowing (b) (6), (b) (7)(C) to take multiple breaks throughout the day to express breastmilk.

(b) (6), (b) (7)(C) at Sheltering Arms Longview location. (b) (6), (b) (7)(C) has been employed with the firm (b) (6), (b) (7)(C) child was (b) (6), (b) (7)(C) old. Prior to accepting the position as (b) (6), (b) (7)(C) explained that (b) (6), (b) (7)(C) would require break time to express breastmilk. Management granted the request to accommodate (b) (6), (b) (7)(C) by allowing (b) (6), (b) (7)(C) to take multiple breaks throughout the day to express breastmilk.

(b) (6), (b) (7)(C) used the family support office, director's office, meeting room, breakroom, and clinic. The time required to express breast milk would range from thirty to forty-five minutes. (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) would like to express breast milk at 0930, 1200, and 1500. Due to supervision requirements of the school (b) (6), (b) (7)(C) did not express breast milk at the same time each day. On or around 11/15/16 (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) met with the Director (b) (6), (b) (7)(C). During this meeting (b) (6), (b) (7)(C) requested that (b) (6), (b) (7)(C) keep (b) (6), (b) (7)(C) nursing break less than thirty minutes. (b) (6), (b) (7)(C) stated that it would be difficult to perform the task in less than thirty minutes.

(b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) only uses the breakroom to express breastmilk because the meeting room is always occupied, and (b) (6), (b) (7)(C) was never told about the family support office. When (b) (6), (b) (7)(C) uses the breakroom the door is not locked and other employees are free to enter. (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) has a device that covers her up. (b) (6), (b) (7)(C) asked (b) (6), (b) (7)(C) to keep it under twenty minutes, because other teachers are covering for (b) (6), (b) (7)(C).

(b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) regularly uses the family support office, director's office, meeting room, breakroom, and clinic. There have been multiple times when (b) (6), (b) (7)(C) was interrupted by coworkers and parents that are picking up their children. (b) (6), (b) (7)(C) stated that the car seats are kept in the breakroom and parents would often rush into the room to grab the car seat interrupting the nursing mothers break. When using the meeting room (b) (6), (b) (7)(C) was often interrupted by other employees who needed access to the room. (See Exhibits D-3-D-7)

It was determined that the meeting room, breakroom, and director's office were inadequate and did not provide reasonable privacy nor met the requirements per Fact Sheet 73. (See Exhibits D-5-D-6).

Section 206 - Minimum Wage:

No minimum wage violations found, employees were paid in accordance with Section 206 of the FLSA.

Section 207 – Overtime:

No overtime violations found, employees were paid in accordance with Section 207 of the FLSA.

Record Keeping: Section 211:

No record keeping violations found, employer maintained records in accordance with Section 211 of the FLSA.

Section 212 - Child Labor:

There were no child labor violations per review of records and statement under Section 212.

CMP's:

CMP's were not assessed for the establishment.

Liquidated Damages:

Liquidated Damages were not assessed for the establishment.

DISPOSITION:

A final conference was held with Human Resources Manager's Norman Hill and Monica Safford at 385 Centennial Olympic Park Dr NW Atlanta, GA 30313 on January 25, 2017. WHI (b) (6), (b) (7)(C) represented Wage and Hour Division. WHI (b) (6), (b) (7)(C) discussed the findings of the investigation and changes that should be made immediately.

During the final conference, WHI (b) (6), (b) (7)(C) discussed the investigation findings per requirements set forth in Fact Sheet 73, and the violations found under 207®(1); the employer failed to provide-

- (A); a reasonable break time for an employee to express breast milk for her nursing child for 1 year after the child's birth each time such employee has need to express the milk; and
- (B); a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk.

WHI (b) (6), (b) (7)(C) also conducted a work site inspection with management to identify an appropriate space for employees should the need arise in the future for Nursing Mother to express breast milk. It was determined and management concurred that the family support office would be suitable and meets the requirements per Fact Sheet 73 and Section 207(r) of the Act.

Mr. Hill acknowledged his understanding of the regulation, and assured WHI (b) (6), (b) (7)(C) that the appropriate steps would be taken to comply in the future. Mr. Hill and Mrs. Safford stated they are currently working on a policy to address the Nursing Mothers requirements and ensure compliance throughout all of their locations.

Publications provided and discussed: HRG was provided to Mrs. Banks on December 20, 2016. Regulation Part 541, Regulation Part 516, Regulation Part 578, Fact Sheet 73, and Fact Sheet 28D were provided during the final conference.

Future correspondence should be sent to:

The Sheltering Arms, Inc.
Attn: Monica Safford (HR Generalist)
385 Centennial Olympic Park Dr NW
Atlanta, GA 30313

Recommendations:

I recommend this file be administratively closed.

Wage & Hour Investigator

Date: January 26, 2017

WHISARD Compliance Action Report

U.S. Department of Labor Wage and Hour Division

Case ID: 1814049 Originating District: Los Angeles District Office
Local Filing Number: 2017-231-08968 Investigating District: Los Angeles District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 02/13/2017
Assignment Date: 02/15/2017

Employer Information

Trade Name: United States Postal Service Legal Name: United States Postal Service
Address: 7001 Central Ave. EIN: (b) (7)
County: Los Angeles
NAICS Code: 491110
Los Angeles, CA90052 No. Of Employees: 50

Investigation Information

Period Investigated From: 12/01/2016 BNPI:
To: 02/09/2017 Reinvestigation: ☒
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Full Investigation Future Compliance Agreed: ☐
Compliance Status: Compliance (no violations found) Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FMLA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FMLA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

Case dropped. (b) (7)(E) ER failed to provide (b) (6) with an adequate space and a reasonable time to express milk. Several attempts were made to contact (b) (6), (b) (7)(C) but no response. Recommend case be administratively closed and (b) (6) be sent a letter notifying (b) (6) of the case status.

WHI Signature: _____ Date: 04/27/2017

Reviewed By: _____ Date: _____

United States Postal Service
7001 S. Central Avenue
Los Angeles, CA 90052
Ph.: (323) 586-3887

Case I.D. No.: 1814049
File No.: 2017-231-08968

MEMO TO THE FILE

Reason for Investigation:

This case was initiated due to (b) (7)(E) (b) (6), (b) (7)(C) employer failed to provide (b) (6) with an adequate space and a reasonable time to express milk.

Coverage

The United States Postal Office is a public corporation, part of the U.S government. It does business in all parts of the country and has thousands of employees. This employer is covered under the FMLA as a unit of government.

MODO: Case has been associated with MODO ID (b) (7)(E). (Ex D-1)

Previous Investigation: There have been several investigation conducted by the Department of Labor – Wage and Hour Division. The last investigation was conducted on April 2016. Cases have been linked. (Ex D-5 & E-1 & E-2)

Investigator: (b) (6), (b) (7)(C) Case ID: 1783748 Case File: 2016-231-08465

Period of Investigation: 11/05/2015 – 04/06/2016

This was a limited investigation conducted due to (b) (6), (b) (7)(C) (b) (7)(E) (b) (6), (b) (7)(C) leave was not designated as FMLA leave. (b) (6) did not wish to pursue investigation and case was dropped.

Scope of Investigation

Attempts to contact (b) (6), (b) (7)(C) were made on several occasions. Voicemails were left on the telephone provided on March 29th, April 6th, 7th and 19th by WHI (b) (6), (b) (7)(C) however calls were not returned. A letter requesting (b) (6), (b) (7)(C) contacted WHI (b) (6), (b) (7)(C) was sent out on April 7th, but still no response. After discussing the status of the case with the ADD, it was suggested that a 2nd letter be sent out with a return/receipt card. The letter was mailed out on April 17th and the signed, return/receipt card, was delivered to the LADO on April 20th. **(Ex D-2: D-4)**

Since (b) (6), (b) (7)(C) did not make any attempts to contact WHI (b) (6), (b) (7)(C) the case has been (b) (7)(C).

Recommendation

I recommend that the case is administratively closed and (b) (6), (b) (7)(C) is sent a letter notifying (b) (6), (b) (7)(C) that the case has been (b) (7)(C).

(b) (6), (b) (7)(C)

Wage and Hour Investigator
April 27, 2017

WHISARD Compliance Action Report

U.S. Department of Labor Wage and Hour Division

Case ID: 1814617 Originating District: Sacramento District Office
Local Filing Number: 2017-302-07450 Investigating District: Sacramento District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 02/17/2017
Assignment Date: 02/17/2017

Employer Information

Trade Name: WalMart Supercenter #4238
Address: 2761 Jensen Ave
Sanger, CA93657

Legal Name: Walmart Stores, Inc.
EIN: 71-0415188
County: Fresno
NAICS Code: 452910
No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 08/06/2016 BNPI: 0
To: 02/17/2017 Reinvestigation: ☒
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

(b) (7)(E). Enterprise coverage. Sect 203(s)(1)(A)-ADV>\$500K & EEs handled interstate commerce goods. MODO Dallas, TX. EX: None claimed or applied. SOC: Extensive priors. Violation: Section 207(r)(1)(A)- not providing reasonable break times to express milk. ER complied immediately following FC & provided training to assistant managers. FC on 2/21/17 w/ Raj Kaur (Co-manager). ER ATFC w/ FLSNM. (b) (7)(E) notified on 2/21/17. Recommend case close no action. Pubs provided to ER during IC & FC.

WHI Signature: _____ Date: 03/14/2017

Reviewed By: _____ Date: _____

Walmart Stores, Inc.
Dba Walmart Supercenter #4238
2761 Jensen Ave
Sanger, CA 93657
Business: 559-875-4268
EIN #71-0415188

Send future correspondence to:

Samuel Romero
2761 Jensen Ave.
Sanger, CA 93657
Ph: 559-875-4268

FLSA NURSING MOTHERS NARRATIVE

REASON FOR INVESTIGATION

This investigation was (b) (7)(E) and limited (b) (6), (b) (7)(C) to Section 7(r) of the FLSA – Break Time for Nursing Mothers Provision (FLSNM). (b) (6), (b) (7)(C) is a nursing mother who needed to express milk for (b) (6), (b) (7)(C) child; it is less than 1 year after the child's birth. (b) (6), (b) (7)(C) (b) (7)(E) (b) (6), (b) (7)(C) current employer (ER), Walmart Supercenter #4238 located in Sanger, CA failed to provide reasonable break times to express milk. (b) (7)(E) was provided (Please see exhibit B-1). The investigation (b) (7)(E) a violation under Section 7(r) of the FLSNM. There were no BWs or CMPs computed or due to (b) (6), (b) (7)(C)

COVERAGE

Walmart Stores, Inc. dba Walmart Supercenter #4238 is a huge retailer of various goods, merchandise, and grocery items. This retailer has been in existence since 1962 and was incorporated in Arkansas on October 31, 1969. The corporate office is located at 702 S.W. 8th Street Bentonville, AK. There are 11,695 stores and clubs in 28 countries. It is a family-owned business, as the company is controlled by the Walton family. Sam Walton's heirs own over 50 percent of Walmart through their holding company,

Walton Enterprises, and through their individual holdings. Doug McMillon is the president and CEO. A listing of the corporate officers can be found on exhibit C-3. The investigated store (Sanger, CA) is open 24 hours a day (See IC interview, website information; exhibits C-1 and C-4).

Enterprise coverage applied to all EEs at under section 203(s)(1)(A) of the FLSA. According to the ER, gross sales were the following: (b) (4) in 2015. At least two EEs handled goods that have entered the stream of commerce such as a Banzai - Repair Patch made in China, Mega Blocks – Picker Wagon made in China, and Tsum Tsum toys also made in China (See IC interview and interstate commerce goods; exhibits C-1 and C-2).

Workforce: There are currently (b) (4) full time and (b) (4) part time employees working at the investigated location and 2.2 million EEs worldwide (See IC interview; exhibit C-1).

Mapping: Walmart Supercenter #4238 did not have any state or federal contracts for the outsourcing of employees. Walmart does not use any temporary agencies to hire EEs. Walmart hires EEs directly through the company website. Walmart sells merchandise directly to customers. The ER does not outsource the janitorial/maintenance work. The work is done by EEs hired directly by Walmart Supercenter #4238 (See FC notes; exhibit D-3).

Period of Investigation: 8/6/2016 through 2/17/2017 (Limited to (b) (6), (b) (7)(C) and to Section 7(r) of the FLSA – Break Time for Nursing Mothers Provision (FLSNM))

MODO: The Main Office District Office (MODO) is Dallas, TX. (b) (7)(E)

(See MODO email; exhibit D-1).

Section 3(d) Employer: (b) (6), (b) (7)(C) (Store Manager) is responsible to run the entire store. When (b) (6), (b) (7)(C) is not available then the co-managers, Raj Kaur and (b) (7)(E) share in those responsibilities. The personnel policies are handled by (b) (6), (b) (7)(C), however, the corporate office sets up the policies for the company. (b) (6), (b) (7)(C) (Human Resources Manager) is responsible to hire the EEs for the store. According to the co-manager, Raj Kaur, all the salaried managers and assistant managers are

responsible to enforce the policies set up by the corporate office. They have all acted in the direct interest of the business in relation to the EEs (See IC interview; exhibit C-1).

EXEMPTIONS

None claimed. (b) (6), (b) (7)(C) is an hourly, non-exempt EE and is subject to Section 207 of the Act. (b) (6), (b) (7)(C) was paid an hourly rate of (b) (6), (b) (7)(C) and worked as a (b) (6), (b) (7)(C) is entitled to protection under the nursing mother provisions of Section 207(r).

STATUS OF COMPLIANCE

Prior History: This ER has extensive history for FMLA and FLSA violations throughout the nation. There were two prior cases specific to FLSNM (Case ID#s 1765287 and 1766287). Both were found to have violations for not providing adequate space to express milk and not providing reasonable break times. **Section 207(r)(1)(A) – A Reasonable Break Time:** Violation found. (b) (6), (b) (7)(C) (b) (7)(E) the assistant managers at the store would question that if (b) (6), (b) (7)(C) was only expressing milk during (b) (6), (b) (7)(C) two paid (15 minute) break times. There was no specific assistant manager that would question (b) (6), (b) (7)(C) added that when they saw (b) (6), (b) (7)(C) going to the office to express milk they would ask (b) (6), (b) (7)(C) “Are you on your break?” (b) (6), (b) (7)(C) felt as if those were the only times (b) (6), (b) (7)(C) could use to express milk. One day before the IC, (b) (6), (b) (7)(C) had spoken to (b) (6), (b) (7)(C) (Co-manager) about (b) (6), (b) (7)(C) situation. (b) (6), (b) (7)(C) was going to make the assistant managers aware that expressing milk must not be limited to break times, however, that had not taken place since WHI performed an unannounced visit and IC on February 21, 2017. During the interview with (b) (6), (b) (7)(C) disclosed that (b) (6), (b) (7)(C) feared (b) (6), (b) (7)(C) would be retaliated against (b) (6), (b) (7)(C) also added that (b) (6), (b) (7)(C) didn't want to get anyone in trouble and just wanted WHI to inform management at Walmart Supercenter #4238 about the FLSNM requirements.

Section 207 (r)(1)(B): - A Place Shielded from View and Free from Intrusion: No violations. (b) (6), (b) (7)(C) utilized an office space located at the back of the retail store. WHI (b) (6), (b) (7)(C) took a tour of the designated space and observed that the space was free from intrusion. The room can be locked from the inside. The only ones that have a key to that room are the store manager and the co-managers. During the IC, (b) (6), (b) (7)(C) informed that nobody attempts to open that room when it is closed since they are aware that there is one nursing mother in the store. WHI also observed that the room was shielded from view. There is a small window which is covered with white paper on both the inside and outside, thus,

preventing anyone to view inside. _

Section 212 – CL: There were no minors under the age of 18 working for this employer (See EE & IC interviews; exhibits B-1 and C-1).

DISPOSITION

An initial conference (IC) and final conference (FC) was held on February 21, 2017 with Raj Kaur (Co-Manager) at the Walmart Supercenter # 4238 located at 2761 Jensen Ave. Sanger, CA. During the FC the following was discussed and explained: FLSA coverage, limited scope of the investigation (FLSNM), MW, OT, R/K, and child labor (CL). The ER was notified of the following FLSA provision that had been violated:

Failure to provide a reasonable break time for a nursing mother- Nursing mothers must be allowed to express milk as needed and must not be limited to only the two (15 minute) break times.

Mrs. Kaur indicated the following reason why the Company was not in compliance with the FLSNM and what they would do to avoid issues in the future (See FC notes; exhibit D-3):

- A. The co-manager informed that she was not aware that (b) (6), (b) (7)(C) was restricted to expressing milk only during (b) (6), (b) (7)(C) two paid break times. She added that she was aware of the nursing mothers regulation but did not know if the assistant managers had received the training. Mrs. Kaur also mentioned that she had not heard any comments from the assistant managers regarding the nursing mother and (b) (6), (b) (7)(C) break times. Immediately following the FC, Mrs. Kaur would have training with the assistant managers and review the requirements for FLSNM. She would reinforce that nursing mothers are allowed to express milk as needed and not be limited to break times. WHI informed the co-manager that (b) (6), (b) (7)(C) is protected against any retaliation under the FLSA and that this was a very sensitive topic for (b) (6), (b) (7)(C). On March 13, 2017, WHI contacted Mrs. Kaur to follow up on the training that was to be given to the assistant managers. She confirmed that four of the managers were provided training the same day (February 21, 2017) and the two other assistant managers were given the training a day or two after that day.

Mrs. Kaur agreed to future compliance with all FLSA provisions.

(b) (6), (b) (7)(C) *Notification:* (b) (6), (b) (7)(C) was initially contacted on February 17, 2017 but did not return the call until February 21, 2017. (b) (6), (b) (7)(C) was contacted on that same day (February 21, 2017) to inform (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) case had been completed and that the ER agreed to comply with FLSNM. On February 22, 2017, February 23, 2017, and February 27, 2017 (b) (6), (b) (7)(C) was called to follow up on the ER's agreement to comply with the reasonable break times. Then on February 28, 2017, (b) (6), (b) (7)(C) informed WHI that (b) (6), (b) (7)(C) had not had any more issues with not allowing (b) (6), (b) (7)(C) reasonable time to express when (b) (6), (b) (7)(C) needed and was no longer restricted to only expressing during (b) (6), (b) (7)(C) two (15 minute) break times (See case diary entries).

Recommendation: It is recommended that this case be administratively closed.

Publications Provided: WH-1282 (HRG), WH-1088, WH-1318, FS#44, FS#77A, FS#73, FS#28D

(b) (6), (b) (7)(C)

Wage & Hour Investigator
March 13, 2017

WHISARD Compliance Action Report

U.S. Department of Labor Wage and Hour Division

Case ID: 1822480 Originating District: Sacramento District Office

Local Filing Number: 2017-302-07578 Investigating District: Sacramento District Office

WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)

Registration Date: 05/15/2017

Assignment Date: 05/15/2017

Employer Information

Trade Name: Cottonwood Court Legal Name: Fresno Millbrook Property LLC

Address: 7442 N. Millbrook Ave EIN: 26-3873564

County: Fresno

NAICS Code: 623312

Fresno, CA93720 No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 07/20/2015 BNPI: 0

To: 07/19/2017 Reinvestigation: ☐

Investigation Type: (b) (7)(E) Recurring Violation: ☐

Investigation Tool: Limited Investigation Future Compliance Agreed: ☒

Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐

CMP: ☐ Follow Up Investigation: ☐

Litigation: ☐ Other Action: ☐

Civil Action: ☐ Denial of Future Certificate: ☐

Criminal Action: ☐ BW Payment Deadline: ☐

Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

Total Violations Under FLSA: 1 \$0.00

WHISARD Compliance Action Report

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FMLA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FMLA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

(b) (7)(E) Enterprise coverage. Sect 203(s)(1)(A)- ADV >\$500k & EEs handled interstate commerce goods. MODO is Sac DO. EX: None claimed or tested. SOC: No prior history. FLSNM: No violations. FLSA: R/K no poster at est. FC on 7/31/17 with Polly Stacy (Executive Director) and Annette Gomez (Assistant exec director/HR). ER ATFC w/ FLSNM and FLSA. (b) notified on 7/19/17 and 7/31/17. Recommend close and no further action. Pubs provided during IC and FC - see narrative.

WHI Signature: _____ Date: 07/31/2017

Reviewed By: _____ Date: _____

Fresno Millbrook Property LLC
Dba Cottonwood Court
7442 Millbrook Ave.
Fresno, CA 93720
Business: 559-446-1266
EIN #263873564

Send future correspondence to:

Polly Stacy
7442 Millbrook Ave.
Fresno, CA 93720
Ph: 559-446-1266

FAIR LABOR STANDARDS ACT - NURSING MOTHERS NARRATIVE

COVERAGE

Fresno Millbrook Property LLC dba Cottonwood Court is a senior living community that offers assisted living and memory care to 105 seniors over the age of 60. This facility offers 75 apartment homes in the assisted living section of the community and 52 apartment homes in the memory care. The services provided include meal preparation, assistance with daily living activities, medication, laundry service, housekeeping, and licensed staff on site 24 hours a day. Cottonwood Court has been in business for about 19 years. There are no branches or other businesses associated. There are 64 owners/investors and one managing member, James Collart (See initial conference interview, limited liability company statement of information, and website information; exhibits C-1 through C-4, and C-6).

Enterprise coverage applied to all employees under section 203(s)(1)(A) of the Fair Labor Standards Act. According to the employer, gross sales were over \$500,000 each year in the last three years. At least two employees handled goods that have entered the stream of commerce such as print cartridges manufactured by Ricoh in Japan and yellow highlighters distributed by Office Depot manufactured in China (See initial conference interview and interstate commerce goods; exhibits C-1 and C-5).

Workforce: There are currently (b) (4) employees working at the investigated location consisting of resident care, dining, housekeeping, maintenance, licensed vocational nurses, and activities staff. (See initial conference interview and current employee list; exhibits C-1 and D-4).

Mapping: Cottonwood Court does not have any direct contracts for the outsourcing of employees. No temporary agencies are used for hiring of staff. The employer hires future employees by posting job openings on Indeed.com, Craigslist.com, and internal postings. Senior residents are referred by senior living referral providers such as “aplaceformom.com” and “caring.com”. Cottonwood Court has referral agreements with the providers but is of no cost to the residents. There are no contracts with medical insurance providers; the employer does not accept medi-cal or medicare and only accepts private pay (See initial conference notes; exhibit C-1).

Period of Investigation: 7/20/2015 through 7/19/2017

MODO: The Main Office District Office (MODO) is Sacramento, CA.

Section 3(d) Employer: James Collart (Managing Member) is the one responsible for making decisions affecting the company. Polly Stacy assists James Collart with making decisions on policies affecting the employees. The personnel policies are handled by Polly Stacy (Executive Director) and Annette Gomez (Human Resources Director). Ms. Stacy and Ms. Gomez make the decisions on new hires. They each share in responsibilities regarding the company in relation to the employees (See initial conference interview; exhibit C-1).

EXEMPTIONS

None claimed or tested. There was only one nursing mother in the last two years and she was a non-exempt hourly employee and subject to Section 207 of the Act. The nursing mother is entitled to protection under the nursing mother provisions of Section 207(r).

STATUS OF COMPLIANCE

Reason for Investigation: This limited investigation (b) (7)(E)

(b) (6), (b) (7)(C), (b) (7)(E) was for failure to

provide adequate space to express milk. (b) (6), (b) (7)(C) failed to provide (b) (7)(E) the case was handled without limiting it to (b) (6), (b) (7)(C) was the only nursing mother working for the employer during the period of investigation. The investigation was limited to Section 7(r) of the Fair Labor Standards Act – Nursing Mothers Provision.

Prior History: There was no prior history for this employer.

Section 207(r)(1)(A) – A Reasonable Break Time: No violations. According to an employee interview with (b) (6), (b) (7)(C) was given reasonable break times to express milk whenever (b) (6), (b) (7)(C) needed. (b) (6), (b) (7)(C) had no issues with not being provided reasonable break times. There were no other nursing mothers working for this employer in the last two years (See employee interviews; exhibits B-1 and B-2).

Section 207 (r)(1)(B): - A Place Shielded from View and Free from Intrusion: No violations. The employer has designated two rooms that can be used by a nursing mother. The rooms that can be utilized by a nursing mother is a private office space located inside the building on the first floor and another room known as the “spa room” located on the second floor. Wage Hour Investigator (b) (6), (b) (7)(C) took a tour of the designated spaces and observed that they were free from intrusion. The rooms can be locked from the inside. The only ones that have access to those rooms are department heads. A sign is placed on the doors notifying staff that the room is in use. Wage Hour Investigator also observed that the rooms were shielded from view. There were blinds on the windows which prevented anyone from viewing the nursing mother. During the initial conference, Ms. Stacy was asked if there were any issues or special requests brought to her attention by a nursing mother but there were no issues. Wage Hour Investigator spoke to nursing mother, (b) (6), (b) (7)(C) who informed that the room (b) (6), (b) (7)(C) used to express milk in the past was the “spa room”. (b) (6), (b) (7)(C) added that the building was infested with fleas making it uncomfortable to express milk. On July 19, 2017, Wage Hour Investigator (b) (6), (b) (7)(C) contacted (b) (6), (b) (7)(C) to ask if the fleas had been terminated and (b) (6), (b) (7)(C) said that there were no more issues with the fleas and (b) (6), (b) (7)(C) had stopped expressing milk three weeks prior. (b) (6), (b) (7)(C) also added that (b) (6), (b) (7)(C) never made the executive director or human resources director aware of the space (b) (6), (b) (7)(C) used being uncomfortable for (b) (6), (b) (7)(C) due to the fleas. Since the issue was rectified and there was no other supporting evidence to show that it was still an issue, (b) (6), (b) (7)(C) (b) (7)(E), and the tour of the designated room by the Wage Hour Investigator was found to be in compliance with Section 207 (r)(1)(B), no violation was cited. In an effort to keep (b) (7)(E) by (b) (6), (b) (7)(C) confidential since (b) (6), (b) (7)(C) was the only nursing mother and a current

employee, wage hour investigator requested a listing of employees that were out on family medical leave and further requested list of names of nursing mothers. There was only one, (b) (6), (b) (7)(C) (See employee interviews, lists, and emails; exhibits B-1, B-2, D-5, and D-6).

Section 211 – Record Keeping: There was a record keeping violation cited for the employer for not having a Fair Labor Standards Act poster at the establishment (See pictures and notes of tour; exhibits D-1 through D-3).

Section 212 – Child Labor: There were no minors under the age of 18 working for this employer (See initial conference interview; exhibit C-1).

DISPOSITION

An initial conference was held on July 19, 2017. A final conference was held on January 31, 2017 with Polly Stacy (Executive Director) and Annette Gomez (Assistant Administrator/Human Resources) at 7442 N. Millbrook Ave. Fresno, CA. During the initial and final conference the following was discussed and explained: coverage, limited scope of the investigation, minimum wage, overtime, record keeping, and child labor. The employer was notified of the following Fair Labor Standards Act provision that had been violated:

Record keeping - Failure to post the Fair Labor Standards Act notice.

Ms. Stacy indicated the following reason why the company was not in compliance with the record keeping provision of the Fair Labor Standards Act and what they would do to avoid issues in the future (See FC notes; exhibit D-10):

- ⌚ Ms. Stacy informed that the reason the Fair Labor Standards Act poster was not posted was because they relied on the third party company that supplied them with the poster to have included all the required notices for State and Federal laws. The issue was corrected by placing a copy of the Fair Labor Standards Act poster in the employees' breakroom.

Ms. Stacy agreed to future compliance with all Fair Labor Standards Act provisions.

(b) (6), (b) (7)(C) *Notification:* (b) (6), (b) (7)(C) was contacted every 30 days with the status of the case. On July 31, 2017 (b) (6), (b) (7)(C) was inform that (b) (6), (b) (7)(C) case had been completed and that the employer had been given the necessary publications and fact sheets regarding the Fair Labor Standards Nursing Mothers Provision (See case diary entries and contact letters; exhibits D-8 and D-9).

Recommendation: It is recommended that this case be administratively closed.

Publications Provided: WH-1282, WH-1088, WH-1318, FS#44, FS#77A, FS#73, FS#28D

(b) (6), (b) (7)(C)

Wage & Hour Investigator
July 31, 2017

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1844207 Originating District: San Francisco District Office
Local Filing Number: 2018-316-09930 Investigating District: San Francisco District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 01/25/2018
Assignment Date: 01/25/2018

Employer Information

Trade Name: Apple Legal Name: Apple Inc.
Address: 1 Infinite Loop EIN: 94-2404110
County: Santa Clara
NAICS Code: 334111
Cupertino, CA95014 No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 02/02/2016 BNPI:
To: 02/01/2018 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Compliance (no violations found) Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

30 hrs. ENT COV under 3(s)(1), ADV over \$500K and interstate commerce. EE terminated for violating ER policy, caring for new born child during scheduled work. ER advised EE of FLSNM rights to take breaks, but told not allowed to care for child during work hours unless on approved leave. ER FLSNM policy complies with statute. ER provides adequate space and breaks as needed to nursing mothers. ER agreed to comply in future. WHI provided FS 73 and 44 and 77. No FLSNM violations.

WHI Signature: _____ Date: 05/09/2018

Reviewed By: _____ Date: _____

FLSA – Nursing Mothers Narrative Report

Apple Inc.
1 Infinite Loop
Cupertino, CA 95014

EIN: 94-2404110
Case ID: 1844207

Coverage

Reason for Investigation: This investigation was initiated based on (b) (7)(E) (b) (6), (b) (7)(C) (b) (7)(E) (b) (6) employer violated Section 207(r) of the Fair Labor Standards Act (FLSA) by failing to provide (b) (6) adequate accommodations for expressing breast milk.

Prior History: Case IDs 1821327 and 84436 were conducted by the San Francisco District Office in 2017 and 1996, respectively, pertaining to (b) (7)(E) under the Family Medical Leave Act (FMLA). No violations were found in those investigations.

MODO: The San Francisco District Office is the MODO for this employer, as enterprise headquarters are located in Cupertino, CA. The enterprise has multiple establishments located throughout the United States. (b) (7)(E)

Period of Investigation: 02/02/2016 – 02/01/2018

Limited Investigation: This investigation was limited to (b) (6), (b) (7)(C) (b) (7)(E) (b) (6) employer failed to provide adequate accommodations for the expression of breast milk under FLSA Section 207(r).

Nature of Business: Apple is a multinational technology corporation headquartered in Cupertino, CA

that designs, develops, and sells consumer electronics, computer software, and online services. (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) was responsible for providing support for social media operations, including reviewing, editing, and approving social media posts by the company.

Enterprise Coverage: All employees of Apple Inc. are covered under the FLSA as the company meets the definition of an “enterprise engaged in commerce” under section 203(s)(1)(A) of the FLSA. Combined Annual Dollar Volume (ADV) exceeds \$500,000, with roughly (b) (4) in revenue reported in 2017, and with multiple employees producing, selling, or handling goods or information that have moved in interstate commerce (See Exhibit C-1 and <https://www.apple.com/>).

Section 203(d) Employer: (b) (6), (b) (7)(C) former supervisor and the manager of the Apple Care, Social Media Team. (b) (6), (b) (7)(C) supervises 12 employees on this team, evaluates employee performance, and has authority in hiring, firing, and employee disciplinary action decisions. (b) (6), (b) (7)(C) therefore meets the definition of “employer” under section 203(d) of the FLSA (See Exhibits B-1, C-2, D-3, D-4).

Status of Compliance

Section 207(r) – Nursing Mother Accommodations: No violations of Section 207(r) of the FLSA were found. (b) (6), (b) (7)(C) (b) (7)(E) employer did not allow (b) (6), (b) (7)(C) adequate break time and space to express breast milk, as required under Section 207(r) of the FLSA (See Exhibit B-1).

(b) (6), (b) (7)(C) took approximately 6 months of leave from work for the birth and care of (b) (6), (b) (7)(C) new-born child, under the FMLA and other company leave policies. (b) (6), (b) (7)(C) child was born (b) (6), (b) (7)(C) was the primary, day-to-day caregiver of the child from the date of its birth until the date of (b) (6), (b) (7)(C) termination from employment. (b) (6), (b) (7)(C) did not seek alternative child care arrangements during this time (See Exhibits B-1, D-5, D-6).

(b) (6), (b) (7)(C) contacted her supervisor, (b) (6), (b) (7)(C) (Team Manager), to inquire about (b) (6), (b) (7)(C) ability to take breaks from work in order to breast-feed her child. (b) (6), (b) (7)(C)

supervisor explained to (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) was allowed to take breaks to express milk through a breast pump or other device, but (b) (6), (b) (7)(C) was not allowed to take breaks during (b) (6), (b) (7)(C) work shift to breastfeed (b) (6), (b) (7)(C) child (See Exhibit B-1). (b) (6), (b) (7)(C) supervisor also explained that (b) (6), (b) (7)(C) was not allowed to perform work for the company while simultaneously caring for (b) (6), (b) (7)(C) child at home, and that (b) (6), (b) (7)(C) needed to find alternative child care arrangements during her work shifts, or use up any available leave or vacation for days when (b) (6), (b) (7)(C) needed to care for the child during (b) (6), (b) (7)(C) shift. (b) (6), (b) (7)(C) told (b) (6), (b) (7)(C) supervisor that (b) (6), (b) (7)(C) was unable to find alternative child care arrangements and that (b) (6), (b) (7)(C) did not have any more available leave. (b) (6), (b) (7)(C) supervisor told (b) (6), (b) (7)(C) was not allowed to clock in for work while simultaneously caring for (b) (6), (b) (7)(C) child, and subsequently penalized (b) (6), (b) (7)(C) for each day that (b) (6), (b) (7)(C) did not clock in for work (See Exhibit B-1). (b) (6), (b) (7)(C) notified (b) (6), (b) (7)(C) on 12/15/17 that (b) (6), (b) (7)(C) was being terminated as a result of (b) (6), (b) (7)(C) unexcused absences from work (See Exhibit D-4).

(b) (7)(E) the claim that the employer denied (b) (6), (b) (7)(C) sufficient break time or space to express breast milk, as (b) (6), (b) (7)(C) was working remotely from (b) (6), (b) (7)(C) own home, and was free to take breaks to express milk as necessary. (b) (7)(E) termination was in violation of the FLSA.

Company policies and practices pertaining to nursing mother accommodations were found to be in accordance with FLSA Section 207(r). Employees working at company establishments and facilities are provided access to private rooms (“Mom Rooms”) that are specifically designated for use by nursing mothers on an as-needed basis (See Exhibits D-7, D-8). The policy indicates that such breaks and spaces should only be used for breast pumping. FLSA Section 207(r) states that employers are only required to provide accommodations for the expression of breast milk, without specifying the specific means of expression. Section 207(r) does not explicitly require that such accommodations be provided for the direct breast feeding of a child. The Code of Federal Regulations does not provide any additional guidance on this issue. Therefore a company policy that only requires time and space accommodations for the expression of breast milk via a breast pump or other device, but does not provide such accommodations for breast feeding, would not be considered a violation of FLSA Section 207(r) (See Exhibits D-7, D-8).

Section 212 – Child Labor: No violations of Section 212 of the FLSA were found for the investigation period.

Disposition

The WHI met with corporate counsel Ms. Lin Zhu, and outside counsel, Mr. Christian Rowley at Apple headquarters on 05/09/2018 to discuss the findings of the investigation and to review company policy pertaining to nursing mothers. The WHI explained the general requirements of FLSA Section 207(r) and provided an overview of the investigation. The WHI explained that the FLSA requires employers are required to provide a reasonable amount of break time and a space to express milk as frequently as needed by the nursing mother, for up to one year following the birth of the employee's child (See Exhibits C-2, E-1).

The employer explained that all nursing mother employees are provided access to private rooms at company establishments that are specifically designated for the expression of breast milk as frequently as needed ("Mom Rooms"). The employer explained that in addition to such specifically designated spaces, employees may also use other private spaces such as offices or conference rooms for breast milk expression (See Exhibits C-2, D-7, E-1). The employer provided a copy of company policies for nursing mothers and showed a sample of some of the rooms used at the establishment. A portion of the written policy states that nursing breaks are to be taken in 15-30 minute increments, once every 2-4 hours, while other portions state that such breaks may be taken on an as needed basis. The employer explained that in practice such breaks may be taken as frequently and for as long as needed (See Exhibits C-2, D-7, E-1). The employer agreed to amend the text of its online policy to explicitly state that nursing breaks, whether using a "Mom Room" or other room, may be taken on an "as needed basis," and to provide the WHI with a copy of the amended text (See Exhibit C-2

The employer provided documentation confirming that (b) (6), (b) (7)(C) was terminated from employment after being cited for multiple unexcused absences while (b) (6), (b) (7)(C) was caring for (b) (6), (b) (7)(C) child. The information provided by the employer confirmed the WHI's determination that no violation of Section 207(r) was found (See Exhibits D-1 through D-4).

(b) (6), (b) (7)(C) **Notification:** The WHI informed (b) (6), (b) (7)(C) on 02/15/2018 of the investigative results.

Publications Provided: WHD Fact Sheets 44, 73 and 77A.

Apple Case ID: 1844207

Recommendation: The WHI recommends that the case be administratively closed with no further action.

(b) (6), (b) (7)(C)

Wage and Hour Investigator

05/09/2018

WHISARD Compliance Action Report

U.S. Department of Labor Wage and Hour Division

Case ID: 1851558 Originating District: Las Vegas District Office
Local Filing Number: 2018-280-02356 Investigating District: Las Vegas District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 04/18/2018
Assignment Date: 05/07/2018

Employer Information

Trade Name: New Horizons Academy Legal Name: New Horizons Center for Learning
Address: 6701 W. Charleston Blvd. EIN: 88-0124435
County: Clark
NAICS Code: 611110
Las Vegas, NV89146 No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 01/01/2017 BNPI:
To: 02/28/2018 Reinvestigation: ☒
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☐
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

16 hrs Nature of business is a preschool. (b) (7)(E) (b) (6) was not provided reasonable breaks to express milk.. (b) (6) also (b) (7)(E) lunches automatically deducted when not taken and that (b) (6) had pretime hours when relieving teachers for breaks. Violations were (b) (7)(E) (b) (6) was not provided with a shielded room to express milk . FC. held via phone on 06/07/18 where ER Agreed to future compliance by stating shielded room would be provided. Recommend case be closed administratively. HRG .FS 44,73

WHI Signature: _____ Date: 06/07/2018

Reviewed By: _____ Date: _____

Case File # 1851558

**New Horizons Center for Learning
Dbas: New Horizons Academy
6701 W. Charleston Blvd.
Las Vegas, NV. 89146
Tel. (702) 880-7597**

Contact :

**Arlene Ambriz
Preschool Director
6701 W. Charleston Blvd.
Las Vegas, NV. 89146
Tel. (702) 880-7594**

EIN : 88-0124435

NURSING MOTHERS FLSA NARRATIVE REPORT

COVERAGE :

Subject firm operates in Las Vegas, NV. Subject firm is a Preschool that's been in business since 1999. There are no other locations. The company employs about (b) (4) employees.

The firm is owned by the Board of Directors and the officials in charge are : Arlene Ambriz (Director) and Jerry Peck (CEO) They are in charge of the daily operations and day to day decision making. They are 3 (d) employers.

Sec. 3(s)(1)(B): The business is engaged in the operation of a non-profit preschool. Therefore, Enterprise Coverage is met.

The period of investigation covers from January 1, 2017 through February 28, 2018 and is limited to [REDACTED] only.

13 (a) (1) is applicable to :

Exemptions were not reviewed. The investigation was limited to [REDACTED] (b) (6), (b) (7)(C) [REDACTED].

Status of Compliance:

Prior History : A search of WHISARD shows no prior investigations of this firm under this Act.

MODO : Las Vegas, NV. There are no other locations.

Reason for Investigation : This investigation was [REDACTED] (b) (7)(E) [REDACTED] (b) (6), (b) (7)(C) [REDACTED] [REDACTED] (b) (7)(E) [REDACTED] (b) (6) was not provided reasonable break time to express milk and these break times were not compensated for.

In addition, [REDACTED] (b) (6), (b) (7)(C) [REDACTED] (b) (7)(E) there were times that [REDACTED] (b) (6) did not take a lunch and that the employer automatically deducted this time. Violation [REDACTED] (b) (7)(E) [REDACTED]. Review of timecards revealed that the times [REDACTED] (b) (6), (b) (7)(C) did not take a lunch, [REDACTED] (b) (6) was compensated for this time. See ex. D-3

through D-3-E.

Furthermore, (b) (6), (b) (7)(C) also (b) (7)(E) like on 3-4 occasions (b) (6) was asked to work 30 minutes before (b) (6), (b) (7)(C) shift to give breaks to teachers and was not compensated for this time. (b) (6), (b) (7)(E) (b) (6), (b) (7)(C) was not allowed to clock in before (b) (6), (b) (7)(C) shift. (b) (7)(E) (b) (6), (b) (7)(C). During the Initial Conference, the employer was made aware of this and stated this never happened. They alleged that the only times (b) (6), (b) (7)(C) was not allowed to clock in before (b) (6), (b) (7)(C) scheduled hour, was when (b) (6), (b) (7)(C) would get (b) (6), (b) (7)(C) child situated. The employer asked for (b) (6), (b) (7)(C) to provide the names of the teachers that (b) (6), (b) (7)(C) would relieve for breaks.

On 05/31/18 I contacted (b) (6), (b) (7)(C) via phone and asked (b) (6), (b) (7)(C) to provide names of teachers so that I can interview them. (b) (6), (b) (7)(C) stated (b) (6), (b) (7)(C) couldn't remember their names.

(b) (7)(E) (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) also (b) (7)(E) (b) (6), (b) (7)(C) had no privacy when expressing milk. The office that (b) (6), (b) (7)(C) was provided with had an uncovered window. (b) (7)(E) (b) (6), (b) (7)(C). See Disposition Section.

Section 6 : This was a limited investigation. A review of the profile pay period was conducted. No apparent minimum wage violations found. See ex. A-0 through A-0-A.

Section 7: This was a limited investigation. A review of the profile pay period was conducted. No apparent overtime violations found. See ex. A-0 through A-0-A.

Sec. 7 (r)-Nursing Mothers : (b) (6), (b) (7)(C) (b) (7)(E) (b) (6), (b) (7)(C) was not provided with significant time to express milk and that this time was not compensated for. (b) (7)(E) (b) (6), (b) (7)(C). Per employer's statement and review of time cards, (b) (6), (b) (7)(C) never clocked out for (b) (6), (b) (7)(C) breaks to express milk. Therefore, this time was paid for even though this time does not have to be compensated for per section 7(r) of the FLSA.

Regarding limiting (b) (6), (b) (7)(C) to 20 minutes to express milk, Ms. Ambriz stated that this was never the case. She stated she would only tell (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) needed to clock out, because this time was uncompensated for, but (b) (6), (b) (7)(C) never did.

On 06/07/18 I spoke to (b) (6), (b) (7)(C) and asked (b) (6), (b) (7)(C) if anyone could attest to this (b) (7)(E) (b) (6), (b) (7)(C) so that I can interview such person. (b) (6), (b) (7)(C) stated (b) (6), (b) (7)(C) did not want to pursue this issue anymore.

(b) (6), (b) (7)(C) also (b) (7)(E) (b) (6), (b) (7)(C) had no privacy when expressing milk. The office that (b) (6), (b) (7)(C) was provided with had an uncovered window. (b) (7)(E) (b) (6), (b) (7)(C)
See Disposition Section

Section 11 : This was a limited investigation. A review of the profile pay period was conducted. No record keeping violations found. See ex. A-0 through A-0-A.

Section 12 : Not applicable. The investigation was limited to (b) (6), (b) (7)(C) who is not a minor.

FMLA Policy Review : Not applicable. The employer has less than 50 employees in any of the 20 current or preceding workweeks.

Disposition

On 06/01/18 I held a Conference via phone with Arlene Ambriz. During the Conference I discussed in detail (b) (6), (b) (7)(C) (b) (7)(E) I informed Ms. Ambriz that (b) (6), (b) (7)(E) (b) (6), (b) (7)(C) was being limited to a maximum of 20 minutes to express milk. Ms. Ambriz stated that this was not the case. She stated (b) (6), (b) (7)(C) was given the time needed to express milk, but (b) (6), (b) (7)(C) was upset because this time was not compensated for.

I also explained that (b) (6), (b) (7)(C) (b) (7)(E) when lunches were not taken, these were automatically deducted. I informed Ms. Ambriz that time cards revealed that when (b) (6), (b) (7)(C) did not take a lunch, this time was compensated for and was not automatically deducted as stated by (b) (6), (b) (7)(C).

Furthermore, I informed Ms. Ambriz (b) (6), (b) (7)(C) also (b) (7)(E) there were days where (b) (6), (b) (7)(C) would work off the clock prior to clocking in to relieve teachers for their break time and that this time was not compensated for. I informed Ms. Ambriz that this (b) (7)(E) (b) (6), (b) (7)(C) since (b) (6), (b) (7)(C) was unable to provide the names of the teachers (b) (6), (b) (7)(C) relieved.

On 06/07/18 I held a phone conference with Ms. Ambriz.

During the phone conference I explained to Ms. Ambriz that (b) (7)(E) regarding (b) (6), (b) (7)(C) only allowed a maximum of 20 minutes to express milk (b) (7)(E) (b) (6), (b) (7)(C). I informed (b) (6), (b) (7)(C) that I reviewed time records to see the amount of break time (b) (6), (b) (7)(C) was given and there were no

clock out times for this break time. Ms. Ambriz stated that it was, because regardless of (b) (6), (b) (7)(C) being told several times to clock out for this break, (b) (6), (b) (7)(C) never did.

In addition, I informed Ms. Ambriz, that the office provided to (b) (6), (b) (7)(C) to express milk, had to be shielded from view and free from any intrusion from co-workers and the public. She stated the office does have a window on the side. However, for future compliance, she stated they would provide the conference room which is totally shielded from view and can be locked to avoid intrusion from co-workers.

I informed Ms. Ambriz that I was concluding the investigation.

(b) (6), (b) (7)(C) **Notification :** (b) (6), (b) (7)(C) was apprised of the results of the investigation via phone on 06/07/18.

Recommendation :

I recommend case be closed administratively.

Publications : The employer was provided with HRG, Fact Sheet 44 and 73.

(b) (6), (b) (7)(C)
Wage & Hour Investigator
06/07/18.

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1854957 Originating District: Sacramento District Office
Local Filing Number: 2018-302-08129 Investigating District: Sacramento District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 05/25/2018
Assignment Date: 05/25/2018

Employer Information

Trade Name: Dollar Tree #1222 Legal Name: Dollar Tree Stores, Inc.
Address: 1115 W Main Street EIN: 54-1387365
County: Merced
NAICS Code: 452990
Merced, CA95340 No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 06/01/2016 BNPI:
To: 05/30/2018 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Compliance (no violations found) Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	2	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

(b) (7)(E). Limited to FLSNM. Enterprise cov. ADV > \$500K & EEs handled interstate commerce goods. MODO Richmond VA. EX: None claimed or applied. SOC: Extensive priors. No Violations found under FLSNM. FC on 7/27/2018 with Sara Rafal (General Counsel) & Patrick Boylan (District HR Manager). ER ATFC w/ FLSNM. [REDACTED] notified on 7/30/2018. Recommend case close no action. Pubs provided to ER during IC & FC-see narrative.

WHI Signature: _____ Date: 07/30/2018

Reviewed By: _____ Date: _____

Dollar Tree Stores, Inc.
Dba Dollar Tree #1222
1115 W Main Street
Merced, CA 95340
(209) 722-7483
EIN #54-1387365

Case ID# 1854957
Case File # 2018-302-08129

Send future correspondence to:

Sara B. Rafal
Assistant General Counsel
500 Volvo Parkway
Chesapeake, Virginia 23320
Phone: (757) 698-7363
Email: srafal@dollartree.com

Fair Labor Standards Act- Nursing Mothers Narrative

COVERAGE

Dollar Tree Stores, Inc. dba Dollar Tree is a \$1.00 discount variety store chain carrying a broad assortment of variety goods. The firm operates over 6,700 establishments in 48 states across U.S.A and Canada, has been in existence since 1986 and was incorporated in the state of Virginia in 1986. The corporate office is located at 500 Volvo Parkway, Chesapeake, VA. Dollar Tree is operated under Chief Executive Officer Gary M. Philbin and Executive Chairman Bob Sasser (See exhibits C-1 through C-4). The investigated store (Dollar Tree #1222) is open 7 days a week from 8am to 9pm. Approximately 16 employees currently work at the store being investigated and over (b) (4) employees nationwide (See exhibit E-2).

The establishment under investigation falls under enterprise coverage per 203(s)(1)(A) during the period of investigation because the enterprise's gross annual dollar volume of sales were over (b) (4) in 2015, 2016 and 2017 (See exhibits C-2 and C-5). Employees handle and sell goods that moved through interstate commerce including bath tissue from Virginia and Soap Pads from Illinois (See exhibits C-6).

Period of Investigation: 6/1/2016 through 5/30/2018 (The investigation was limited to (b) (6), (b) (7)(C) and the employees who returned from maternity leave within the period of investigation. The investigation was also limited to Section 7(r) of the FLSA – Break Time for Nursing Mothers Provision).

MODO: The corporate headquarters is located at 500 Volvo Parkway, Chesapeake, VA 23320 which is within the Richmond VA District Office. The MODO inquiry was sent on 5/25/2018. (b) (7)(E)
(See exhibit D-1).

Section 3(d) Employer: (b) (6), (b) (7)(C) (Store Manager) is responsible to run the entire store. When (b) (6), (b) (7)(C) is not available then the assistant managers (hourly employees), (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) share in those responsibilities. The personnel policies are handled by (b) (6), (b) (7)(C) (District Manager), however, the corporate office sets up the policies for the company. (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) are responsible for the hiring and/or firing of employees at the store. According to the (b) (6), (b) (7)(C) (District Manager), (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) are responsible to enforce the policies set up by the corporate office. (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) meet the definition of an employer under Section 3(d) of the FLSA because they acted in the direct interest of the business in relation to the employees (See exhibit B-1 through B-6 and C-1).

EXEMPTIONS

None claimed or tested. (b) (6), (b) (7)(C) and the additional employees included in the investigation were non-exempt hourly employees and subject to Section 207 of the Act. The non-exempt nursing mothers were entitled to protection under the nursing mother provisions of Section 207(r).

STATUS OF COMPLIANCE

Reason for Investigation:

This investigation was (b) (7)(E) (b) (6), (b) (7)(C) is a nursing mother who needed to express milk for (b) (6), (b) (7)(C) child; it is less than 1 year after the child's birth. (b) (6), (b) (7)(E) (b) (6), (b) (7)(E) current employer, Dollar Tree #1222 located in Merced, CA failed to provide reasonable break times to express milk, failed to provide her with a private space other than a bathroom and reduced (b) (6), (b) (7)(E) work hours to avoid having to accommodate (b) (6), (b) (7)(E) nursing needs. (b) (7)(E)

(b) (7)(E) was provided (See exhibit B-2). The investigation did not (b) (7)(E) (b) (6), (b) (7)(C) (b) (7)(E) or any violations under Section 7(r) of the FLSNM.

Prior History: This employer has extensive history for FLSA and FMLA violations throughout the nation. There were no prior cases specific to FLSNM (See exhibit D-8).

(b) (6), (b) (7)(C) (b) (7)(E) had been taking 10-15 minutes past (b) (6), (b) (7)(C) lunch time to go home and breastfeed (b) (6), (b) (7)(C) baby every day. (b) (6), (b) (7)(C) further explained that Assistant Manager (b) (6), (b) (7)(C) was aware and was okay with (b) (6), (b) (7)(C) doing so. (b) (6), (b) (7)(C) clocked out/in for (b) (6), (b) (7)(C) lunch break and was not paid for that time. (b) (6), (b) (7)(C) added that on May 23rd, Store Manager (b) (6), (b) (7)(C) approached (b) (6), (b) (7)(C) to question why (b) (6), (b) (7)(C) was taking more than 30 minutes for lunch and (b) (6), (b) (7)(C) explained that (b) (6), (b) (7)(C) was taking 35-40 minutes because (b) (6), (b) (7)(C) was going home to breastfeed her baby. (b) (7)(E) (b) (6), (b) (7)(C) told (b) (6), (b) (7)(C) was no longer able to take the additional 5-10 minutes after (b) (6), (b) (7)(C) scheduled 30 minute lunch break because this was messing up (b) (6), (b) (7)(C) audits. (b) (6), (b) (7)(C) also added that (b) (6), (b) (7)(C) asked for (b) (6), (b) (7)(C) to pump in the store's bathroom instead and when (b) (6), (b) (7)(C) declined to so, (b) (6), (b) (7)(C) told (b) (6), (b) (7)(C) was going to cut (b) (6), (b) (7)(C) work hours to 3 per day so (b) (6), (b) (7)(C) did not have to take a lunch break while (b) (6), (b) (7)(C) was breastfeeding. (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) was scheduled to work 4 hours on that day (5/23/2018) but was sent home an hour early permitting (b) (6), (b) (7)(C) to only work 3 hours. (b) (6), (b) (7)(C) (b) (7)(E) was not offered or informed of a designated location/room to express breast milk prior to 5/26/2018.

WHI performed an unannounced visit and an initial conference on May 29, 2018. During the initial conference, (b) (6), (b) (7)(C) claimed that (b) (6), (b) (7)(C) did not tell (b) (6), (b) (7)(C) was not allowed to take 45 minutes for lunch and declined having reduced (b) (6), (b) (7)(C) work hours. (b) (6), (b) (7)(C) additionally claimed that (b) (6), (b) (7)(C) suggested (b) (6), (b) (7)(C) to use the upstairs room (designated lactation room) and not the bathroom. (b) (6), (b) (7)(C) furthermore stated that (b) (6), (b) (7)(C) asked (b) (6), (b) (7)(C) if (b) (6), (b) (7)(C) wanted (b) (6), (b) (7)(C) daily hours be reduced to 3 hours to make it easier for (b) (6), (b) (7)(C) to go home and not have to rush to come back into work only temporarily while (b) (6), (b) (7)(C) was breastfeed. (b) (6), (b) (7)(C) specified that (b) (6), (b) (7)(C) working hours were not changed because (b) (6), (b) (7)(C) did not provide a response as to whether or not (b) (6), (b) (7)(C) wanted it done. (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) (District Manager) stated that a reduction of hours was done across the board on the week of 5/23/2018 to meet the corporation's goals and indicated information on the weekly schedules and payroll would reflect this (See exhibit C-1).

(b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) indicated that a meeting would be held with (b) (6), (b) (7)(C) right after initial conference

to ensure she is accommodated in the best possible manner. WHI followed up with (b) (6) on 6/5/2018 via telephone to obtain an update on the accommodations (b) (6), (b) (7)(C) was provided with. (b) (6) stated (b) (6), (b) (7)(C) met with (b) (6), (b) (7)(C) and was informed that (b) (6), (b) (7)(C) had no problem with (b) (6) taking an unpaid 45 minute lunch break every day to allow (b) (6), (b) (7)(C) to go home and breastfeed (b) (6), (b) (7)(C) baby. (b) (6), (b) (7)(C) also added that (b) (6), (b) (7)(C) hours had gone back to normal and was even working more than prior to contacting Wage and Hour (See exhibits).

Section 207(r)(1)(A) – A Reasonable Break Time: No violation found.

The investigation did not (b) (7)(E) a violation of Section 207(r)(1)(A) of the Fair Labor Standards Act. Although (b) (6) stated that (b) (6), (b) (7)(C) (store manager) did not allow (b) (6), (b) (7)(C) to take a reasonable break to go home to breastfeed (b) (6), (b) (7)(C) baby during lunch, the investigation determined that going home to breastfeed a child is not an activity that is protected by the provision. The law requires that employers provide nursing mother the reasonable break time to express breast milk at the site of employment and does not require employers to accommodate nursing mothers by allowing them to go home and breastfeed. No evidence was found demonstrating that (b) (6), (b) (7)(C) was not permitted to take reasonable break time to express breast milk at work. In addition, employee interviews taken from assisting managers indicated that (b) (6), (b) (7)(C) did not attempted to exercise (b) (6), (b) (7)(C) right to express breast milk at work but rather wanted to go home and breastfeed (b) (6), (b) (7)(C) child during lunch time (See exhibits B-1, B-3, B-4 and B-5).

Even though an employee interview from a former employee (nursing mother) indicated (b) (6), (b) (7)(C) was not allowed to take reasonable break time to express breast milk within the period of the investigation (See exhibit B-6), (b) (7)(E) (See exhibits B-1 through B-5).

Section 207 (r)(1)(B): - A Place Shielded from View and Free from Intrusion: No violations found.

The investigation did not (b) (7)(E) a violation of Section 207(r)(1)(B) of the Fair Labor Standards Act. Although (b) (6) claimed that (b) (6), (b) (7)(C) was not offered a private space other than a bathroom to express breast milk, the investigation found that (b) (6), (b) (7)(C) did not attempt to be accommodated to express breast milk because (b) (6), (b) (7)(C) desired to go home and breastfeed instead (See exhibits B-1 through B-5 and C-1). According to a former assisting manager's interview statement, (b) (6), (b) (7)(C) was given the option to express breast milk at work but declined stating “No, I don't pump. I like breastfeeding” (See exhibit B-1). In addition, it appeared that all employees interviewed during the WHD visit were well aware of the existence of the upstairs room (designated room) that was made available for pumping which indicates that (b) (6), (b) (7)(C) could have known of the existence of this room too but decided not to use it because (b) (6), (b) (7)(C) preferred to go home to breastfeed

instead (See exhibits B-1 through B-6 and C-1).

On 5/29/2018, WHI took a tour of the designated space located on the second floor of the store and observed that the space was free from intrusion- the room had a door that can be locked from the inside. WHI also observed that the room was shielded from view- there was a window that was tinted black, thus, preventing anyone to view inside. In addition, the WHI observed that the room had a table, a chair, a power outlet. No issues were found with the room.

Even though an employee interview from a former employee (nursing mother) indicated that the designated room was not private due to not having a door when (b) (6), (b) (7)(E) utilized it (See exhibit B-6), (b) (7)(E) by other employee interviews or observations (See exhibits B-1 through B-5).

Although, an assisting manager disclosed in (b) (6), (b) (7)(E) interview that a former nursing mother utilized the bathroom to express breast milk on a few occasions, (b) (7)(E) through other employee interviews including interview from the employee (b) (7)(E) to have used the restroom (See exhibits B-3 and B-6).

Section 215(a)(3) – Retaliation Under the FLSA: No violation found.

The investigation did not find the employer in violation of Section 215(a)(3). Even though the investigation (b) (7)(E) (b) (6), (b) (7)(E) regarding Store Manager reducing (b) (6), (b) (7)(E) work hours in an attempt to prevent (b) (6) from taking lunch breaks longer than 30 minutes due to (b) (6), (b) (7)(E) going home to breastfeed baby, this was not a violation of the Act as breastfeeding is not a protected activity under FLSA and reduction of hours occurred on May 23, 2018 which was prior to (b) (6), (b) (7)(E) making contact with Wage and Hour Division (WHD) (See exhibits B-2, C-1, D-6, D-7 and E-3).

(b) (6), (b) (7)(C) interview statement, hours were increased back to normal or higher than normal after the WHI made contact with employer on May 29, 2018 (See exhibit B-2).

DISPOSITION

A final conference was held on July 27, 2018 with Sara Rafal (General Counsel) and Patrick Boylan (District HR Manager) via teleconference due to firm's headquarters located in the State of Virginia. During the final conference, the following was discussed and explained: Fair Labor Standards Act

(FLSA) coverage, limited scope of the investigation, period of investigation, employee eligibility, FLSA provisions- break time for nursing mothers, minimum wage, overtime, recordkeeping and child labor.

WHI recommended training regarding FLSNM provision for Store Manager and Assisting Managers as they recognized not being fully knowledgeable of requirements under provision. Ms. Rafal stated she will be recommending firm to have some sort of training or meetings to assure key employees such as managers and assisting managers are well informed of required accommodations for mothers/employees who are nursing. Ms. Rafal also added that a copy of Fact Sheet 73A would be shared through the firm's stores.

Ms. Rafal agreed to future compliance with all provision under the Fair Labor Standards Act including the Break Time for Nursing Mothers.

(b) (6), (b) (7)(C) *Notification:* (b) (6), (b) (7)(C) was contacted on July 30, 2018 to inform (b) (6), (b) (7)(C) of the investigation findings.

Recommendation: It is recommended that this case be administratively closed.

Publications Provided: WH-1282 (HRG), WH-1088, WH-1318, FS#44, FS#77A, FS#73, FS#28D

(b) (6), (b) (7)(C)

Wage & Hour Investigator
07/30/2018

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1857213 Originating District: San Francisco District Office
Local Filing Number: 2018-316-10005 Investigating District: San Francisco District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 06/21/2018
Assignment Date: 06/21/2018

Employer Information

Trade Name: Comcast Legal Name: Comcast Corporation
Address: 1788 Tuolumne St EIN: 27-0000798
Vallejo, CA94589 County: Solano
NAICS Code: 517410
No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 08/15/2016 BNPI:
To: 08/14/2018 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

27 HRS FLSANM (b) (7)(E) case. ER covered under Sec 3(s)(1)(A) of the FLSA as ADV is well over \$500k and employees regularly answer phone calls and send emails as part of job duties. (b) (7)(E) ER did not provide adequate space per 7(r) of the Act. (b) (7)(E). ER agreed to remedy by modifying manager's office/cash room to be in compliance with 7(r). FC held with Colleen McDade, HR Manager on 9/24/18 where ER agreed to future compliance. Rec admin closure.

WHI Signature: _____ Date: 09/26/2018

Reviewed By: _____ Date: _____

Comcast Corporation
1788 Tuolumne St
Vallejo, CA 94589

EIN: 27-0000798

Points of contact: HR Manager, Colleen McDade 707-646-0002
Attorney, Chase Ensign, 925-424-0159, 925-349-5246

Coverage

Reason for Investigation: This investigation was initiated (b) (7)(E) (b) (6), (b) (7)(C) of Comcast Corporation. (b) (6), (b) (7)(C) (b) (7)(E) (b) (6), (b) (7)(C) employer violated Section 207(r) of the Fair Labor Standards Act (FLSA) by failing to provide (b) (6), (b) (7)(C) adequate accommodations for expressing breast milk. WHI (b) (6), (b) (7)(C) (b) (7)(E) the employer did not provide (b) (6), (b) (7)(C) adequate space to express milk.

MODO: The Philadelphia District Office is the MODO for this employer, as enterprise headquarters are located in Philadelphia, PA. The enterprise has multiple Xfinity store locations throughout the United States. (b) (7)(E)

(See Exhibits D-1-1b). (b) (7)(E)

Period of Investigation: 08/15/2016 – 08/14/2018

Nature of Business: Comcast Corporation is an American global telecommunications conglomerate headquartered in Philadelphia, Pennsylvania. It is the second-largest broadcasting and cable television company in the world by revenue. It is also the largest home Internet service provider in the United States, and the nation's third largest home telephone provider. The employee worked in a Comcast store location in Vallejo, CA.

Enterprise Coverage: All employees of Comcast Corporation are covered under the FLSA as the company meets the definition of an “enterprise engaged in commerce” under section 203(s) (1) (A) of the FLSA. Annual Dollar Volume (ADV) exceeds \$500,000, with approximately (b) (4) in revenue reported in 2016 and 2017. See Exhibit C-4. In addition, multiple employees producing, selling, or handling goods or information that have moved in interstate commerce by answering phone calls, emails, and swiping credit cards as part of their job duties (See Exhibit C-1-C-1b).

Section 203(d) Employer: Mr. Erick Campos is (b) (6), (b) (7)(C) supervisor and the manager of the Vallejo, CA Comcast store. He supervises 10 employees at the store and makes daily decisions on behalf of the employer. Mr. Campos therefore meets the definition of “employer” under section 203(d) of the FLSA (See Exhibits B-1, C-1-C-1b).

(b) (7)(E)

(b) (7)(E)

A detailed account of (b) (6), (b) (7)(C) failure to provide (b) (7)(E) is documented in the above paragraph.

Age of Baby: Based on record's provided by the employer, the baby was under 1 year of age at the start of the investigation. (b) (6), (b) (7)(C) took leave starting (b) (6), (b) (7)(C). See Exhibits D-4b-D-4c.

Status of Compliance

Prior History: Case IDs 1398922, 1400983, 1419277, and 1486376 were conducted by the San Francisco District Office in 2005 and 2007 respectively. Case ID 1398922 pertained to (b) (7)(E) under the Family Medical Leave Act (FMLA) which found no violations. Case ID 1400983 pertained to joint employment with independent contractors providing installation services. Comcast was deemed a joint employer in the investigation with the WHI recommending initiating investigations on the subcontractors. Case ID 14192747 was (b) (7)(E) Case ID 1486376 was a FMLA investigation which found recordkeeping violations. This investigation has been linked to the previous cases referenced above and prior history case summaries can be found in Exhibits D-7-D-7c.

Limited Investigation: This investigation was limited to (b) (6), (b) (7)(C) (b) (7)(E) (b) (6) employer failed to provide adequate accommodations for the expression of breast milk under FLSA Section 207(r).

Section 207(r) – Nursing Mother Accommodations: Violation disclosed. (b) (6), (b) (7)(C) (b) (7)(E) (b) (6) employer did not allow (b) (6) adequate space to express breast milk, as required under Section 207(r) of the FLSA (See Exhibit B-1).

(b) (6), (b) (7)(C) stated that the employer offered (b) (6) the use of the manager's office, but that (b) (6) did not feel comfortable with those accommodations for multiple reasons. The manager's office has a window, employees have access to the manager's office with a badge or key, and the room has a camera. (b) (6), (b) (7)(C) was also offered use of the women's restroom. In the meantime, the employer recommended the employee come in 15 minutes early before or after (b) (6) shift) so (b) (6) could take an extra 15 minutes during (b) (6) lunch to drive home and express milk. As the manager's office was not acceptable, the employee elected to take the extra 15 minutes during (b) (6) lunch period to express milk at home. See Exhibit B-1.

WHI (b) (6), (b) (7)(C) visited the Vallejo, CA Comcast store location on August 14, 2018 and conducted an initial conference with store manager, Erick Campos. Mr. Campos confirmed he had been working with Human

Resources to address the nursing mothers situation. He stated that the employer had been giving the employee additional time during meal breaks. He was also unsure of company policy. He stated that the store had limited space and that the employee had been presented with 3 different options and had elected to take an extra 15 minutes. The first option presented to the employee was the women's restroom with a chair. The second option was the cash-out room/manager's office, which is adjacent to the break room. Mr. Campos stated the room has a camera and any employee who has a badge has access to the room. Both he and Human Resources brainstormed and had the ideas to cover up the window and put a sign on the door, so employees knew not to enter the room. The employer tried to accommodate the employee. Employer reiterated that the employee elected to take the additional 15 minutes and that the store had limited options. See Exhibits C-1-C-1b. WHI (b) (6), (b) (7)(C) explained FLSANM regulations to the employer and that the restroom was not an adequate space. In addition, WHI (b) (6), (b) (7)(C) documented photos of both the break room and the manager's office/cash room and camera to see if it complied with regulations. See Exhibits D-2c-D-2g.

Section 7 (r) (1) (b) requires employers to provide, “a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk.”

FOH Section 59 (12) reads:

“A. A bathroom, even if private or designated specifically to nursing mothers, is not a permissible location under the statute

B. The space must be “shielded from view and free from intrusion. There is no statutory requirement that the space be equipped with a lock in order to be “free from intrusion. Employers may take other steps, such as indicating that the space is in use, in order to prevent coworkers or the public from intruding.

C. The location provided must be one that “may be used by an employee to express breast milk (i.e. a functional space).

A space temporarily created or converted into a space for expressing milk, or made available when needed by the nursing mother, is sufficient provided that the space is shielded from view and free from intrusion”

Based upon WHI (b) (6), (b) (7)(C) review of the cash room/manager's office, the space did not meet the requirements under Section 7(r) (1) (b) of the FLSA. The space was not shielded from view, as there was both a camera in the office, as well as a large window by the door. In addition, the space was not free from intrusion as employees could easily enter and exit the room. See Exhibits D-2c-D-2g.

Section 6 - Minimum Wage: No violations were established. Note that this investigation was limited in scope to the FLSANM with a review of the profile pay period. See Exhibits A-0-A-0ag.

Section 7- Overtime No violations were established. Note that this investigation was limited in scope to the FLSANM with a review of the profile pay period. See Exhibits A-0 – A-0ag.

Section 11 - Recordkeeping No violations were established. Note that this investigation was limited in scope to the FLSANM with a review of the profile pay period. See Exhibits A-0-A-0ag.

Section 12 - Child Labor: No violations of Section 212 of the FLSA were found for the investigation period. See Exhibit C-1-C-1b.

Disposition

A conversation with Colleen McDade, HR Manager, on August 15, 2018, disclosed that the manager's office is also known as the cash room. The cash room is a private room at the back of the store, but understood the employee's trepidation in using the room as there is a camera. Ms. McDade stated their compliance attorney had reviewed the issue as well. Ms. McDade disclosed she had spoken with the employee on June 4, 2018 and that the employee had agreed to take the extra 15 minutes during (b) (6) lunch period and that the solution had been mutually agreed upon. See Exhibit C-3.

A conversation with employment attorney Chase Ensign on August 24, 2018 disclosed that Mr. Ensign's understanding was that the employee was offered multiple options. The cash room was presented as an option, but the camera made the space not palatable for the employee. The employee elected to take the extra break time. Regarding company policy, Mr. Ensign stated that the company would explore the

options based on each store. Mr. Ensign also clarified the camera in the manager's office and company policy. Mr. Ensign stated the camera needed to be on in the room for security purposes. Mr. Ensign stated he would seek additional clarification on company policy pertaining to the camera in the cash room/manager's office. See Exhibits C-2-C-2a.

An additional conversation with Mr. Ensign on September 5, 2018, clarified that the camera needs to be inside the cash room for security purposes. Mr. Ensign clarified that the camera is framed and zoomed in only on the safe. Mr. Ensign clarified that the camera is centrally located and controlled by a Security Officer and that it would be inconvenient to turn the camera on and off. Mr. Ensign explained that the company was open to putting up a partition in the room if necessary. Mr. Ensign clarified that Comcast wanted to comply with all aspects of the law and stated that after a conversation with the employee, the employer elected to let the employee go home. That was not the employer's first option as they wanted to make the cash room available. Mr. Ensign stated that he would check to see if the camera is only zoomed in on the safe and if there is a portion of the view that is not in view of the camera. See Exhibits C-2-C-2a.

An additional conversation with Mr. Ensign on September 12, 2018 disclosed that he had spoken to Ms. McDade, HR Manager, who informed him that the camera could be maneuvered so that the employee could use the room to express milk. He clarified that the employee would not be in view of the camera, as the entire room was not visible to the camera. See Exhibits C-2-C-2a.

A follow up conversation with Ms. McDade on September 17, 2018 disclosed that she had looked at the view of the camera and that it is totally fixed on the safe and that the employee could comfortably sit in the manager's office/cash room without being in view of the camera. Ms. McDade also explained that if the employee wanted a partition, the employer would be open to providing one. Ms. McDade provided WHI (b) (6), (b) (7)(C) with a photo of the camera's view of the manager's office/cash room. See Exhibits C-2-C-2a and D-2.

WHI (b) (6), (b) (7)(C) visited the establishment on September 17, 2018 to take photos of the cash room/manager's office, as well as the employee break room. Based on the camera view photo provided by Ms. McDade, WHI (b) (6), (b) (7)(C) confirmed that there was a portion of the cash room/manager's office that was not in view of the camera. See Exhibits D-2a and D-2b.

Per protocol, WHI (b) (6), (b) (7)(C) had a conversation with Regional Coordinator Kihnley on September 20, 2018 to discuss the facts and findings of the case. The violation was discussed in detail as well as the remedy round in the investigation. Regional Coordinator Kihnley approved moving forward with the final conference.

A telephonic final conference was held with Colleen McDade, HR Manager, and WHI (b) (6), (b) (7)(C) on September 24, 2018 to discuss the findings of the investigation. WHI (b) (6), (b) (7)(C) explained the general requirements of FLSA Section 207(r) and provided an overview of the investigation. WHI (b) (6), (b) (7)(C) explained that the FLSA requires employers are required to provide a reasonable amount of break time and a space to express milk as frequently as needed by the nursing mother, for up to one year following the birth of the employee's child. Ms. McDade reiterated the employer wanted to comply with all regulations and that they wished to make the appropriate accommodations to the cash room. These accommodations included putting a sign on the door and covering up the window next to the door. In addition, Ms. McDade stated the company would put up a partition in the cash room in the portion of the room that is not in view of the security camera if the employee wished. WHI (b) (6), (b) (7)(C) explained that these accommodations were acceptable under Section 7(r) of the FLSA given that the space would be shielded from view and free from intrusion. Although there was not a lock on the door, the employer had taken steps, such as putting a sign on the door, in order to prevent coworkers from intruding.

(b) (6), (b) (7)(C) **Notification:** (b) (6), (b) (7)(C) did not respond to multiple attempts at contact by telephone, email, or mail. (b) (7)(E)

Publications Provided: WHD Fact Sheets 44, 73 and 77A, Handy Reference Guide (HRG)

Recommendation: The WHI recommends that the case be administratively closed with no further action.

(b) (6), (b) (7)(C)

Wage and Hour Investigator

Comcast Case ID: 1857213

09/26/2018

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1700113 Originating District: Jackson MS District Office
Local Filing Number: 2013-208-00812 Investigating District: Jackson MS District Office
WHMIS Case Number: Lead Investigator: (b) (7)(C), (b) (6)
Registration Date: 07/03/2013
Assignment Date: 07/03/2013

Employer Information

Trade Name: The Kroc Center
Address: 575 Division Street

Biloxi, MS39533

Legal Name: The Salvation Army
EIN: 58-0660607
County: Harrison
NAICS Code: 813410
No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 09/18/2011 BNPI:
To: 07/14/2013 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Full Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

WHISARD Compliance Action Report

Conclusions & Recommendations:

(23.25 hrs) 3(s)(1)(A) cov.ER w/ 50 EEs; adequate space for NM viols; (b) (6), (b) (7)(C)
(b) (7)(E) re ER's failure to offer adequate space, other than a bathrm, for expressing breast milk. (b) (7)(E)
FC held at est on 07/26/13 with HRM Wanda Lowe, Dir of Ops Erin Darche, & Div. HRD Gina Oubre; FC
assured; space provide with privacy screen and door lock; (b) (7)(E) adv. by VM; Pubs: HRG, Pts 516, 541, 778, 785, WH-
1325 & 1330; FMLA FSs and forms. MODO - ATL DO. Rec. adm. close.

WHI Signature: _____ Date: 07/26/2013

Reviewed By: _____ Date: _____

FLSANM NARRATIVE

The Salvation Army
Ray and Joan Kroc Corps Community Center (aka The Kroc Center)
575 Division Street
Biloxi, MS 39530
Telephone: (228) 374-9100
EIN: 58-0660607
Case ID#: 1700113

COVERAGE

The subject firm is a community church, recreational, and social services facility. The facility offers a variety of athletic and recreational activities for youth and adults, music training and workshops, and includes a performance and visual arts theatre. The 52,000 SF facility includes an aquatics center, gymnasium, fitness center, dance and aerobics studio, and an outdoor track. The Kroc Center offers a variety of spaces for rent, and there are four types of memberships: youth, adult, senior, and family. Guest day passes are also available. The facility opened for business on 09/17/2011. (Ex. C-1, C-3 through C-6)

The home office for the subject firm is the Southern District Territorial office in Atlanta, GA. The Division office is in Jackson, MS, and includes facilities in Mississippi, Alabama, and Louisiana. The area office is the Mississippi Gulf Coast office, 2019 22nd Street, Gulfport, MS 39501, and includes facilities in the lower six counties in Mississippi. The Area Commander is Major Gary Sturdivant. The point of contact at the local facility is Ms. Erin Darche, director of operations, and Wanda Lowe, human resources manager. There are numerous branches of The Salvation Army worldwide, and 23 Kroc Centers throughout the United States. The subject facility employs (b) workers. (Ex. C-1)

3(d) Employer: Director of Operations Erin Darche and Area Commander Major Gary Sturdivant meet the definition of a 3(d) employer. They manage the facility, make financial

decisions, employment decisions, and are responsible for the day-to-day business decisions. (Ex. C-1)

The subject firm receives a variety of supplies from Sun Coast Business Supply out of Gulfport, MS. Sun Coast is a local distributor of over 100,000 items from various businesses throughout the United States. All employees handle goods that have moved in commerce.

The subject firm's annual dollar volume (ADV) for 2011 was (b) (4), and in 2012, it was (b) (4) (Ex. C-1)

The subject firm is a covered enterprise under Section 3(s)(1)(A) of the Fair Labor Standards Act (FLSA) since their ADV is over \$500,000, and it has employees handling goods that have moved in commerce. In addition, since the facility employs 50 or more employees, the employer must comply with the break time for nursing mothers provisions under Section 7(r) of the Act. (Ex. C-1)

Family and Medical Leave Act (FMLA): The subject firm employed over 50 workers during 20 workweeks in 2012 and 2013 and is a covered employer under the FMLA. A policy review was conducted, and the employer's general notification was found to meet the requirements of the FMLA. (Ex. D-3)

Period of Investigation: 09/18/2011 to 07/14/2013

MODO: MODO contact was made with the Atlanta District Office on 07/11/2013. (b) (7)(E) (Ex. D-1)

EXEMPTIONS

There were no exemptions from the break time for nursing mothers requirements of the FLSA found during this investigation. The firm employed more than 50 workers, and the affected employee was a non-exempt, hourly employee. (Ex. B-1 and C-1)

STATUS OF COMPLIANCE

Reason for Investigation: This full investigation was based on (b) (7)(E) and addressed compliance with the break time for nursing mothers requirement under Section 7(r) of the FLSA.

(b) (7)(E) Data: (b) (6), (b) (7)(C)
(b) (7)(E) the employer failed to provide a place, other than a bathroom, to express breast milk. (b) (6), (b) (7)(E)
(Ex. B-1)

History: There is no prior history of violations pertaining to the Ray and Joan Kroc Corps Community Centers. However, a history search under The Salvation Army found numerous case actions under other Acts, and one case action under the FLSANM.

- I. Case ID# 167778: The Salvation Army, Plainwell, MI; investigation period 08/06/2012 to 10/31/2012; violations included failure to provide reasonable break time and failure to provide adequate space. The final conference was held on 02/08/2013 with representatives of the local establishment and the Midwest Territory office. (Ex. D-2)

Section 7(r): The employer failed to provide adequate space for an employee to express breast milk for (b) (6), (b) (7)(C) nursing child who was under the age of one. Failure to provide adequate space is a violation of Section 7(r) of the FLSA. (b) (6), (b) (7)(C) child was born (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) began her employment with the subject firm (b) (6), (b) (7)(C). The employer designated the family locker room as the space for the employee to express breast milk. While the family locker room shielded the employee from view and was free from intrusion from coworkers and the public, it did not meet the definition of adequate space because it was a bathroom.

Section 12, Child Labor: There was no indication of child labor violations. The subject firm does employ minors aged 16 and 17 who work as lifeguards in the aquatic center. Dates of birth are verified. (Ex. C-1)

FMLA: The employer displayed the FMLA poster as required. A policy review was conducted, and the employer's general notice was found to be in compliance with the regulations. (Ex. D-3)

DISPOSITION

Disposition of (b) (7)(E). On 07/26/2013, a voice message was left on (b) (6), (b) (7)(C) telephone advising (b) (6), (b) (7)(C) of the results of the investigation.

Handy Reference Guide: A copy of the Handy Reference Guide was given to the human resources manager Wanda Lowe and the director of operations Erin Darche at the initial conference on 07/10/2013.

The final conference was held at the establishment on 07/26/2013. Representing the employer were Human Resources Manager Wanda Lowe, Director of Operations Eric Darche, and Divisional Human Resources Director Gina Oubre. WHI (b) (6), (b) (7)(C) represented the Agency.

Coverage and exemptions were discussed, and the violation was explained. Ms. Oubre stated that the employee was initially given two choices for a space to express breast milk. The employee chose the classroom which was free from intrusion since the door could be locked. The employee sat in the far corner of the room with very little visibility from the corridor. The employer did not realize that the glass door and window needed to be covered to completely shield the employee from view.

The employer assured future compliance. The employer has temporarily placed curtains over the windows and has ordered a three-panel privacy screen that will be used once received. This screen can be placed around the employee for complete privacy. (Ex. C-69)

FMLA: Compliance under the Family and Medical Leave Act was discussed with the employer, and a copy of Fact Sheet 28D was provided. A copy of Regulations Part 825 was ordered online on 07/26/2013 to be mailed directly to the employer. (Ex. E-1)

The employer was advised of the possibility of civil money penalty assessment resulting from this violation and/or future violations. The employer was also advised that employees have a private right of action under Section 16(b) of the FLSA.

The employer is not a party to any private litigation under Section 16(b) or any pending litigation, nor is the employer in bankruptcy at this time.

Publications: Handy Reference Guide; FLSA poster; EPPA Poster; Regulations Part 516, Part 541, Part 778, and Part 785; WH-1325 and WH-1330; Fact Sheets #16, 17A, 21, 22, 23, 43, and 73; FMLA poster; FMLA Fact Sheets 28, 28A, 28B, 28C, and 28D; FMLA Forms WH-380-E, WH-380-F, WH-381, WH-382, WH-384, WH-385, and WH-385-V; Section 7(r) of the FLSA.

RECOMMENDATIONS

MODO: (b) (7)(E) [REDACTED], and a copy of the narrative has been posted in WHISARD.

I recommend this file be administratively closed.

(b) (6), (b) (7)(C) [REDACTED], WHI

Date

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1779855 Originating District: Miami FL District Office
Local Filing Number: 2016-249-19517 Investigating District: Miami FL District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 12/21/2015
Assignment Date: 12/21/2015

Employer Information

Trade Name: Publix Super Markets, Inc. - Store 620 Legal Name: Publix Super Markets, Inc.
Address: 11977 Southern Blvd. EIN: 59-0324412
County: Palm Beach
NAICS Code: 445110
West Palm Beach, FL33411 No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 11/03/2015 BNPI:
To: 12/21/2015 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

11 hrs. Ent cov. Limited investigation in to FLSNM (b) (7)(E) - nursing mother not provided with intrusion-free area to express breast milk. (b) (7)(E); co-workers twice entered area while (b) (7)(E) was expressing. FC 12/23/15 w/ Store Mgr. Jules Verchp, Asst. Store Mgr. Jerry Leeks and HR Sr. Investigator Christopher Tissot. ATC by providing different area that is intrusion-free to (b) (7)(E) Pubs: HRG and FS 73. Recommend close.

WHI Signature: _____ Date: 01/06/2016

Reviewed By: _____ Date: _____

FLSNM NARRATIVE REPORT

This is an investigation regarding the compliance or non-compliance of Publix Super Markets, Inc. with its obligations under section 207(r) of the FLSA. That section provides:

“Reasonable break time for nursing mothers

(1) An employer shall provide—

(A) a reasonable break time for an employee to express breast milk for her nursing child for 1 year after the child's birth each time such employee has need to express the milk; and

(B) a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk.”

COVERAGE

Business Information: The employer is a large super market chain that, according to its website, has more than 1,100 stores in Alabama (61 stores) Florida (769 stores) Georgia (183 stores) North Carolina (11 stores) South Carolina (54 stores) Tennessee (38 stores). Its website states that it also has eight distribution centers and ten manufacturing centers in Florida and Georgia. (b) (6), (b) (7)(C) worked at Store 620.

The corporate headquarters of the employer are located at 3300 Publix Corporate Parkway, Lakeland, FL 33811. (b) (6), (b) (7)(C) works at a Publix store that is located at 11977 Southern Boulevard, Royal Palm Beach, FL 33411.

The ADV of the business is reported on the employer's website to have exceeded (b) (4) in 2014. Its ADV is therefore sufficient for 3(s)(1)(A) coverage for the 2015 investigation period with which this case is concerned. In addition, Publix engages in interstate commerce by operating in several states.

Enterprise coverage is therefore present for the investigation period.

MODO: The Tampa DO is the MODO. (b) (7)(E)
(Exhibit D-1).

Misclassifications: None disclosed.

Period of Investigation: November 3, 2015 to December 21, 2015. The investigation addressed the issue of one nursing mother, who returned to work (b) (6), (b) (7)(C) following the eight-week maternity leave (b) (6), (b) (7)(C) took after the birth of (b) (6), (b) (7)(C) child (b) (6), (b) (7)(C).

Investigative Tool: Limited investigation regarding (b) (6), (b) (7)(C) nursing mother break time complaint.

FMLA Coverage: Publix Super Market employed fifty or more workers during this or the preceding calendar year. It is a covered employer.

EXEMPTIONS

WHI reviewed only whether (b) (6), (b) (7)(C) is exempt and found that no exemption applies to (b) (6), (b) (7)(C) is paid (b) (6), (b) (7)(C) per hour and (b) (6), (b) (7)(C) is a nursing mother who gave birth less than one year ago. (Exhibit B-1).

STATUS OF COMPLIANCE

History: There is an extensive investigation history regarding this employer. WHI did not locate any cases that addressed break times for nursing mothers, however.

Reason for Investigation: The case was initiated following (b) (7)(E) the employer failed to provide (b) (6), (b) (7)(C), a nursing mother, with an area that is free from intrusion from co-workers in which to express breast milk. (b) (7)(E)

(b) (6), (b) (7)(C) Data:

(b) (6), (b) (7)(C)

WHI advised (b) (6), (b) (7)(C) of the results of this investigation on December 23, 2015.

Section 6 – Minimum Wage: A thorough review of the employer's compliance with the FLSA's minimum wage requirements was not undertaken but no violations were evident during a review of the employer's profile pay period records. The store at which (b) (6), (b) (7)(C) worked had (b) (6) employees during the profile pay period and the payroll records exceeded 300 pages. The profile pay period is not attached as an exhibit due to its voluminous nature.

Section 7 – Overtime: A thorough review of the employer's compliance with the FLSA's overtime requirements was not undertaken but no violations were evident during a review of the employer's profile pay period records.

Section 7(r) – Intrusion-free area to express: A violation was disclosed. Although the employer provided (b) (6), (b) (7)(C) with a room that locks, instructed (b) (6), (b) (7)(C) to place a “Do Not Disturb” sign on the door, and told (b) (6), (b) (7)(C) co-workers not to enter the room when it was being used, co-workers intruded on (b) (6), (b) (7)(C) on two occasions although (b) (6), (b) (7)(C) had followed the employer's instructions. (Exhibit B-1). On the second occasion, (b) (6), (b) (7)(C) was fully exposed to the intruding co-worker while (b) (6), (b) (7)(C) was expressing. (b) (6), (b) (7)(C) was also visible to other co-workers and store customers although (b) (6), (b) (7)(C) does not know if anyone but the intruding co-worker saw (b) (6), (b) (7)(C).

(b) (6), (b) (7)(C) suffered no monetary loss because of this violation.

Section 11: Record Keeping: This case was limited to the issue of break time for nursing mothers. No determination was made regarding whether the employer complies with all record keeping requirements of the FLSA.

Section 12: Child Labor: This case was limited to the issue of break time for nursing mothers. No determination was made regarding whether the employer complies with all child labor requirements of the FLSA. However, the employer provided WHI with a list of minors who work at this store and their position. The employer also assured WHI that minors are employed only as baggers and checkers. The employer further assured WHI that although the store's deli includes a meat slicer and that fried foods are prepared at the store, no minor is allowed to work in those areas of the store or to have anything to do with the meat slicer or fryer. The employer also assured WHI that the hazardous occupations that are set forth in the FLSA are known to it and that no minor is allowed to engage in any work that constitutes one. (Exhibit D-2).

FMLA The employer's FLMA policy was not reviewed because of the limited nature of the investigation.

DISPOSITION

A final conference was held by telephone on December 23, 2015 with Christopher Tissot (Human Resources Investigator), Store Manager Jules Verchp and Assistant Store Manager Jerry Leeks.

WHI reviewed with the employer's representatives the reason for the investigation and the facts that had been reported. No one disputed that there had been intrusions when (b) (6), (b) (7)(C) was expressing breast milk.

Mr. Verchup told WHI that although attempts had been made to provide a private and intrusion-free area in which (b) (6), (b) (7)(C) could express, the intrusion had occurred because of "human error." He stated that he has taken the following steps, all of which he has communicated to (b) (6), (b) (7)(C), and to which (b) (6), (b) (7)(C) agreed, to ensure that no intrusions occur in the future:

- (b) (6), (b) (7)(C) will only express milk in the manager's office, which is located behind the customer service desk and is not accessible to the general public.
- (b) (6), (b) (7)(C) will be allowed to access that office whenever needed. If the manager is working in the office, (b) (6), (b) (7)(C) will vacate it within five minutes of being advised by (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) needs to use it.
- The only store employees who have keys or access to keys to the manager's office are the manager and assistant manager. No one else will have access to keys to the office.

- (b) (6), (b) (7)(C) will lock the door when (b) (6), (b) (7)(C) uses the office and the employer provided her with a sign that states “Do Not Disturb, Do Not Knock” that (b) (6), (b) (7)(C) will place on the door when (b) (6), (b) (7)(C) uses it.
- Employees who have access to the area in which the manager's office is located have been instructed not to attempt to enter the office or to or knock on the door when the sign is in place.

WHI also reviewed the FLSA's requirements regarding minimum wage, overtime for non-exempt employees, record keeping requirements and child labor. Mr. Tissot told WHI that the employer pays at least the minimum wage for all hours worked and additional half-time for overtime to non-exempt employees. He also told WHI that they maintain time records that comply with the FLSA. Finally, he told WHI that the company is aware of the restrictions on the work that can be performed by persons under the age of eighteen and that they comply with the FLSA's requirements regarding child labor. Mr. Tissot told WHI that Publix will continue to comply with the FLSA regarding all these matters.

Specifically, the employer agreed to:

- Provide a reasonable break time for the complainant to express breast milk for one year after the child's birth each time such employee has need to express the milk.
- Provide a place – specifically, the manager's office – which will be shielded from view and free from intrusion from coworkers and the public, that may be used by the complainant to express breast milk.
- Continue to pay all non-exempt employees a rate of pay that is at least the federal minimum wage of \$7.25 per hour.
- Continue to pay all non-exempt employees time and a half their regular rate for all hours worked that exceed forty per workweek.
- Continue to comply with all FLSA record keeping requirements.
- Continue to comply with all FLSA child labor requirements.

CMPs: The employer was advised at the final conference that CMPs could be imposed for future monetary or child labor violations.

Publications provided: HRG; Fact Sheet 73 (Break Time for Nursing Mothers).

Recommendation: I recommend that the file be closed.

Correspondence:

Christopher Tissot
Publix Super Markets, Inc.
140 Stoneridge Drive
Suite 430
Columbia, SC 29201

(b) (6), (b) (7)(C), WHI

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1602167 Originating District: Raleigh NC District Office
Local Filing Number: 2011-291-00182 Investigating District: Raleigh NC District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 11/19/2010
Assignment Date: 11/19/2010

Employer Information

Trade Name: Starbucks Legal Name: Starbucks Coffee Company
Address: 7819 Forest Pine Drive EIN: 91-1325671
Charlotte, NC 28273 County: Mecklenburg
NAICS Code: 722211
No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 01/05/2009 BNPI: 10
To: 01/02/2011 Reinvestigation: ☒
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Full Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
No Violation found for this act / Compliance (no violations found)					\$0.00	\$0.00	
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

FLSA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
Failure to keep accurate records / Agree to Comply	1	0	\$0.00	\$0.00	\$0.00	\$0.00	
FLSA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	
Total Violations Under FLSA :	1						\$0.00

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
No Violation Found for this Act / Agree to Comply					\$0.00	\$0.00	
FLSNM Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FMLA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
No Violation found for this act / Compliance (no violations found)					\$0.00	\$0.00	
FMLA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

WHISARD Compliance Action Report

Conclusions & Recommendations:

FLSA Section 7(r)(B), (b) (6), (b) (7)(C) (b) (7)(E) the ER failed to provide adequate accommodations for (b) (6), (b) (7)(C) to express breast milk. (b) (7)(E) is covered and claimed that (b) (6), (b) (7)(E) had to express within view of co-workers. (b) (7)(E). ER admitted to ignorance of requirements under Sec 7(r). ER ATC. (b) (7)(E) informed of findings. RAC. See narrative.

WHI Signature: _____ Date: 02/10/2011

Reviewed By: _____ Date: _____

Starbucks Corporation

d/b/a Starbucks Coffee Company
Store #10324
7819 Forest Pine Drive
Charlotte, NC 28273
(704)523-2699

Corporate:
Starbucks Corporation
2401 Utah Avenue South
Seattle, WA 98134
(206) 447-1575

Federal Tax ID # 91-1325671

Reason for Investigation:

(b) (6), (b) (7)(C) (b) (7)(E) the subject firm failed to provide adequate accommodations to express breast milk for (b) (6), (b) (7)(C) nursing child. (b) (6), (b) (7)(C) (b) (7)(E) the subject firm does not have any closed areas throughout the establishment and (b) (6), (b) (7)(C) was forced to express breast milk at the manager's desk which was not shielded from view or interruption from (b) (6), (b) (7)(C) co-workers. The subject firm admitted that (b) (7)(E). See Exhibit WH-3 and B-7.

On February 10, 2011, (b) (6), (b) (7)(C) was made aware of the findings of this investigation.

Coverage:

Employee Coverage

(b) (6), (b) (7)(C) worked as a non-exempt hourly paid employee and therefore; was not exempt from FLSA Section 7(a). Additionally, (b) (6), (b) (7)(C) need to express breast milk for (b) (6), (b) (7)(C) nursing child is within one year after the child's birth. See Exhibit C-3

Employer Coverage:

The subject firm operates as a limited specialty restaurant where it sells and serves coffee and tea beverages, cappuccinos, and a variety of pastries to the general public. The subject firm formed in November 1985 and is incorporated in Washington State. The subject firm's common stock trades on the NASDAQ under the symbol "SBUX". The subject firm has approximately 11,131 company-operated and licensed stores throughout the United States. The subject firm's ADV for 2009 and 2010 is (b) (4) and (b) (4) respectively. All (b) (4) employees at store # 10324, which is a corporate store, routinely handle goods that have moved in interstate commerce such as coffee from Washington State. Additionally, employees' swipe credit cards through a terminal to process credit transactions. The clearinghouse for credit card transactions is processed in Delaware. Therefore, 3(s)(1)(A) is applicable. See Exhibits B-1 through B-8

Mr. Howard Schultz is the Chairman, President & CEO is the responsible party who meets the definition of FLSA Section 3(d) in that he is an officer of the corporation and is actively involved in the daily operations of the business. He is the ultimate decision maker of all labor relations with regards to employees. See Exhibit C-2-d

This is a full investigation. The investigation period is from January 5, 2009 through January 5, 2011. The subject firm's corporate office is located within the Seattle, Washington District Office. MODO contact was made. (b) (7)(E)

See Exhibit D-1.

Per WHISARD a FLSA investigation was conducted in September, 2010 where no violations were found. See Exhibit D-2

Exemption:

541.100 is applicable to Stephanie Lipka. Ms. Lipka primary duty is to manage. Ms. Lipka serves as the store manager and has the authority to hire and fire employees. Ms. Lipka supervises twelve employees and receives a salary which exceeds \$455 per week. See Exhibit A-0-13, B-1 through B-7 and D-18.

Status of Compliance:

(b) (6), (b) (7)(C) (b) (7)(E) the subject firm failed to provide adequate accommodations to express breast milk for (b) (6), (b) (7)(C) nursing child. (b) (6), (b) (7)(C) (b) (7)(E) the subject firm does not have any closed areas throughout the establishment and (b) (6), (b) (7)(C) was forced to express breast milk at the manager's desk which was not shielded from view or interruption from (b) (6), (b) (7)(C) co-workers. The subject firm admitted that (b) (7)(E) See Exhibit WH-3 and B-7

Pay Practices

The workweek is from Monday through Sunday. Payday is bi-weekly. Employees do not receive a bonus or commissions. The subject firm furnishes without cost hats, name tags and aprons to employees. The subject firm pays a \$.50 per hour tip income to each non-exempt employee. Employees are assigned an employee identification number where he/she uses a computerized time clock to capture hours worked. See Exhibit B-1 through B-8 and C-1-b.

Section 6(a): Minimum Wage. No violation. The subject firm pays each non-exempt employee at least the applicable Federal minimum wage. See Exhibit A-0, B-1 through B-8, and D-23.

Section 7(a): Overtime: No violation. The subject firm properly pays overtime to non-exempt employees. See Exhibit D-23

Section 7(r)(1)(A): Reasonable Time: No violation. The subject firm does provide reasonable break time for an employee to express (b) (6), (b) (7)(C) breast milk for a nursing child for up to one year of the child's birth. Exhibit B-1 through B-7

Section 7(r)(1)(B): Appropriate accommodations: Violation. The subject firm failed to provide a place that is shielded from view and free from intrusion from co-workers and the public whereas a mother could express breast milk. See Exhibit B-1 through B-7 and D-9 through D-16

There is no evidence or admission that adhering to the requirement(s) would impose the subject firm any

undue hardship by significant difficulty or expense.

Section 11(c): Recordkeeping. No violations. The subject firm keeps accurate records in accordance with Part 516. See Exhibit B-1 through B-7 and D-23.

Section 12(a): Child Labor. No violations. Employee interviews, initial conference and tour of establishment revealed no evidence of minors employed. See Exhibits B-1 through B-7

Other Laws

H2B: Temporary non-immigrant Visa Program: Not applicable. Subject firm does not participant in the H2B Program.

Part 825: Family Medical Leave Act policy review was conducted and no discrepancies were found. See Exhibit D-21.

Disposition

On December 14, 2010 an unannounced brief initial conference was held. WHI (b) (6), (b) (7)(C) represented the US Dept of Labor. Mrs. Kay Helms, District Manager and Ms. Stephanie Lipka, Store Manager, represented the subject firm. A handy reference guide was provided to Mrs. Helms. WHI (b) (6), (b) (7) explained the major aspects of FLSA. Minimum Wage, Overtime, Recordkeeping and Child Labor provisions were explained in details and understood.

(b) (7)(E), WHI (b) (6), (b) (7) explained the requirements of Section 7(r). Mrs. Helms immediately confessed that she had a former employee who was expressing breast milk. Ms. Helms stated that she had very little knowledge on what the law required. Mrs. Helms said that she knew she had to provide the time whenever the need aroused to express breast milk but she had no knowledge that she needed to provide a place that was shielded from the co-workers and public.

Mrs. Helms said that she had eleven stores within her territory and that she plans on complying before any official guidance from corporate. Mrs. Helms stated she was going to have the facility personnel look for

a concordance portable divider with wheels that could be easily stored. Mrs. Helms said she would place the device (divider) in front of the manager's desk where employees walking by could not view an employee expressing milk. Mrs. Helms stated that she had two employees who may need to express breast milk in the near future. Mrs. Helms said had she known what the law required, she could have easily met the requirement.

On January 18, 2011, WHI (b) (6), (b) (7) met with Mrs. Helms at the establishment. Mrs. Helms stated that she has not been able to find any suitable portable dividers. She asked WHI (b) (6), (b) (7) if a 5ft divider would suffice. WHI (b) (6), (b) (7) told Mrs. Helms that she could not advise her on what to use to adhere to the requirement. However, WHI (b) (6), (b) (7) told her that if a person that was 6ft tall walked by, the intrusion of co-workers could be compromised. Mrs. Helms stated that she would look for a device at least 7ft tall.

WHI (b) (6), (b) (7) told Mrs. Helms that although her efforts to come into immediate compliance were commendable, the Agency is requesting a corporate policy concerning employees who need to express breast milk. Mrs. Helms stated that she had spoken with Emi McElroy, Paralegal; Ms. Shelly Ranus, Director of Corporate Counsel and Mrs. Kristen Ruff, Partner Resource Manager. Mrs. Helms stated that she informed Corporate of the Dept of Labor's request for a preferably written corporate policy. Mrs. Helms stated she has not received any guidance or response from Corporate.

On January 18, 2011, WHI (b) (6), (b) (7) spoke with Emi McElroy, Paralegal and inquired about a corporate policy regarding nursing mothers. Ms. McElroy told WHI that it was her understanding that the company was not required to provide or develop a corporate policy because there is no regulation of the law. Ms. McElroy said that she would inform Shelly Ranus, Director of Corporate Counsel of WHI's inquiry and have Ms. Ranus return WHI's call.

WHI (b) (6), (b) (7) left two telephone messages for Shelly Ranus, Director of Corporate Counsel. Ms. Ranus had failed to respond.

On February 2, 2011, (b) (6), (b) (7)(C), stated that a divider place in front of the entry way which leads to the manger's desk area would have suffice for privacy to express (b) (6), (b) (7) breast milk.

On February 10, 2011, a telephone final conference was held. WHI (b) (6), (b) (7)(C) represented the US

Dept of Labor. Mrs. Kay Helms, District Manager, represented the subject matter.

WHI (b) (6), (b) (7) reiterated the major aspects of the FLSA. Coverage, Minimum Wage, Overtime, Recordkeeping and Child Labor provisions were discussed and understand.

Mrs. Helms stated that she had not heard anything from corporate concerning a corporate-wide policy regarding nursing mothers. Mrs. Helms said that this investigation gave her enough direction and guidance so that she knows how to comply with or without corporate guidance. Mrs. Helms said she believed she had more knowledge concerning nursing mothers than anyone within the corporation. Mrs. Helms said that due to store specific layouts, she is being very creative and diligent in finding a portable device to use to shield a nursing mother. Mrs. Helms said she wanted a device that she could store in her garage until the need arose. Mrs. Helms said upon receipt of such device, she would provide WHI (b) (6), (b) (7) a photocopy.

WHI (b) (6), (b) (7) told Mrs. Helms that the Agency accepts her declaration to future compliance regarding Section 7(r). WHI (b) (6), (b) (7) reiterated WHD Fact sheet 73. WHI (b) (6), (b) (7) said that there were no other violations found and (b) (6), (b) (7) was going to recommend that the case be administratively closed.

WHI (b) (6), (b) (7) thanked Mrs. Helms for her cooperation throughout this investigation.

Recommendation:

(b) (7)(E), it is recommended that this case be considered for administrative closure. (b) (7)(E)

Responsible Party:

Mr. Howard Schultz, Chairman, President & CEO

Starbucks Case ID: 1602167

2401 Utah Avenue South
Seattle, WA 98134
206-318-1640

Publications Provided: HRG, Fact sheet 73 and WH1318.

(b) (6), (b) (7)(C), WHI
February 10, 2011

WHISARD Compliance Action Report

U.S. Department of Labor Wage and Hour Division

Case ID: 1609327 Originating District: Jacksonville FL District Office
Local Filing Number: 2011-214-06670 Investigating District: Jacksonville FL District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 02/09/2011
Assignment Date: 02/09/2011

Employer Information

Trade Name: Dillard's Legal Name: The Higbee Company
Address: 2298 Martin Luther King Blvd EIN: 34-0288590
County: Bay
NAICS Code: 45211
Panama City, FL 32405 No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 12/01/2010 BNPI:
To: 03/07/2011 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
No Violation found for this act / Compliance (no violations found)					\$0.00	\$0.00	
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
Failure to provide reasonable break time / Agree to Comply	1	0	\$0.00	\$0.00	\$0.00	\$0.00	
Failure to provide adequate space / Agree to Comply	1	0	\$0.00	\$0.00	\$0.00	\$0.00	
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	
Total Violations Under FLSNM :	2						\$0.00

FMLA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
No Violation found for this act / Compliance (no violations found)					\$0.00	\$0.00	
FMLA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

30 Hrs. Enterprise Coverage. (b)(7) Case. Breaks for Nursing Mothers. Sec. 7 violation disclosed. (b)(7) was unable to take time to express (b)(6) milk. (b)(7) was placed in a room not shielded from view and intrusion. ER fixed the situation and ATC. FC with Corporate Legal Representative, Nanette Savage, on 3/16/11. Recommend file be closed Pubs: HRG FLSA, Fact Sheets#:73 & Section 15(a)(3) of FLSA.

WHISARD Compliance Action Report

WHI Signature: _____ Date: 03/22/2011

Reviewed By: _____ Date: _____

**Dillard's
Dillard's Inc.
2295 Martin Luther King Blvd.
Panama City, FL 32405**

**Case ID #: 1609327
Case #: 2011-214-06670**

**FEIN: 71-0388071
(850) 769-7671
(501) 376-5261**

FLSA NARRATIVE REPORT

History

Extensive investigative history on this corporation was found nationwide. No investigations of this particular store were found on WHISARD.

MODO

The Arkansas DO is the MODO. (b) (7)(E)

(See Exhibit D-1).

Coverage

Corporate Information:

The Higbee Company, DBA Dillard's, is a department store chain with 300 stores across 29 states. It was founded in 1938. The store in Panama City, Florida is incorporated under this company. The corporate offices are located in Little Rock, Arkansas. The corporation grosses over (b) (4) dollars annually. This specific store currently employs (b) (4) employees.

The established workweek starts on Sunday and ends on Saturday. Employees are paid bi-weekly on Friday.

Section 3 (s)(1)(A) of the FLSA during the entire investigative period because the employer's ADV is in excess of \$500,000 per year and they have 2 or more employees engaged in commerce.

Exemptions

Exemptions were not explored because this is a limited investigation related to the breaks for nursing mothers.

Status of Compliance

Period of Investigation: December 1, 2010 to March 7, 2011

Reason for Investigation: This case was setup as a limited investigation as a result of (b) (7)(E) (b) (6), (b) (7)(C), related to the break time for nursing mothers under the FLSA.

(b) (7)(E) Data:

(b) (6), (b) (7)(C)

(b) (7)(E) for the past two months (b) (6), (b) (7)(C) had been unable to express (b) (6), (b) (7)(C) milk during shift because no one could take (b) (6), (b) (7)(C) place, which meant (b) (6), (b) (7)(C) was only able to express (b) (6), (b) (7)(C) milk during lunch break (See WH-3). In addition, (b) (6), (b) (7)(C) also claimed that the room (b) (6), (b) (7)(C) was directed to go express (b) (6), (b) (7)(C) milk in was not shielded from view or intrusion because the door did not lock. (b) (6), (b) (7)(C) provided us

with (b) (7)(E) (b) (6), (b) (7)(C) claims were (b) (7)(E) during the investigation. On March 22, 2011 the investigator contacted (b) (6), (b) (7)(C) to notify (b) (6), (b) (7)(C) of the findings.

Section 6 – Minimum Wage: Limited investigation. Minimum wage issues were not addressed. However, they are not apparent or likely.

Section 7 - Overtime: Violations disclosed. (b) (6), (b) (7)(C) is an hourly sales employee, who works 25-30 hours per week. (b) (6), (b) (7)(C) is not exempt under Section 7 of the FLSA and therefore the provisions related to the breaks for nursing mothers apply to (b) (6), (b) (7)(C). In addition, the employer also has (b) (4) employees at this store and approximately (b) (4) employees nationwide.

(b) (6), (b) (7)(C) was only able to go express (b) (6), (b) (7)(C) milk during (b) (6), (b) (7)(C) lunch break because one particular immediate supervisor would not allow (b) (6), (b) (7)(C) to go during (b) (6), (b) (7)(C) shift. The employer claims that they were unable to have someone cover (b) (6), (b) (7)(C) floor during that time. In addition, (b) (6), (b) (7)(C) claimed that the door in the visual room, where (b) (6), (b) (7)(C) was told to go express (b) (6), (b) (7)(C) milk at, did not have a working lock. This was an issue of contention with the employer who claimed the door was operating properly. Nonetheless, the employer provided (b) (6), (b) (7)(C) with a sign to put on the door and that prevented other people from walking in that room. In addition, as of March 7, 2011 (b) (6), (b) (7)(C) confirmed that (b) (6), (b) (7)(C) is now able to express (b) (6), (b) (7)(C) milk during (b) (6), (b) (7)(C) shift.

Section 11 – Record Keeping: Limited investigation. Record keeping issues were not addressed.

Section 12- Child Labor: Limited investigation. Child Labor issues were not addressed.

FMLA

The Higbee Company has 50 or more employees within a 75-mile radius and therefore, not covered under FMLA (See Exhibit C-1).

Disposition

WHI (b) (6), (b) (7)(C) held a final conference over the phone with Ms. Nanette Savage, Corporate Legal Representative, on March 16, 2011. At the beginning of the investigation WHI (b) (6), (b) (7)(C) had been in contact with Mr. Jay Walker, General Manager Panama City Store, and he was looking into (b) (7)(E). However, he was unable to provide us with all the information and forwarded the case to their Corporate Legal Representative on March 2, 2011.

During the Final Conference Ms. Savage was notified that we established enterprise coverage during the entire investigative period based on the fact that the revenue for the establishment exceeded \$500,000 per year and that they have 2 or more employees engaged in commerce.

In addition, she was notified that because they were covered as an enterprise and since (b) (6), (b) (7)(C), (b) (6), (b) (7)(C) was not an exempt employee under Section 7 of the FLSA (b) (6), (b) (7)(C) was covered under the break times for nursing mothers as specified under this section.

WHI (b) (6), (b) (7)(C) discussed (b) (6), (b) (7)(C) (b) (7)(E) with the employers several times. The investigator explained that (b) (6), (b) (7)(C) claimed that a specific supervisor, (b) (6), (b) (7)(C), would not allow (b) (6), (b) (7)(C) to go express (b) (6), (b) (7)(C) milk during (b) (6), (b) (7)(C) shift. This caused (b) (6), (b) (7)(C) to only be able to do so during (b) (6), (b) (7)(C) lunch break. (b) (6), (b) (7)(C) claimed that (b) (6), (b) (7)(C) would tell (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) did not have anyone to cover for (b) (6), (b) (7)(C) during that time. In addition, (b) (6), (b) (7)(C) claimed that (b) (6), (b) (7)(C) was directed to go pump (b) (6), (b) (7)(C) milk at the visual office and that the space was not shielded from view and intrusion because the door did not lock. (b) (6), (b) (7)(C) even explained that often times people walked on (b) (6), (b) (7)(C) while (b) (6), (b) (7)(C) was expressing her milk.

Originally Mr. Walker claimed that they never denied (b) (6), (b) (7)(C) from her breaks, but that they asked (b) (6), (b) (7)(C) to let them know so they could send someone to cover (b) (6), (b) (7)(C) floor. He also said that the door in the visual office was working properly. However, (b) (6), (b) (7)(C) repeatedly said that (b) (6), (b) (7)(C) was still having issues even after our initial contact with the employer. At that point the case was transferred to their legal department. I spoke to Ms. Nannette Savage several times discussing the issues, she never admitted or denied any violations, but promised to look into the issues. All the details were provided to Ms. Savage by phone on March 2, 2011.

A conversation with (b) (6), (b) (7)(C) on March 9, 2011 indicated that the situation had changed. (b) (6), (b) (7)(C) said that as of March 7, 2011 (b) (6), (b) (7)(C) was now able to go express (b) (6), (b) (7)(C) milk once during (b) (6), (b) (7)(C) shift and then also at (b) (6), (b) (7)(C) lunch time. (b) (6), (b) (7)(C) also claimed that the visual office was cleaned and sanitized and that (b) (6), (b) (7)(C) was provided with a sign to put on the door to prevent intrusion from other co-workers. Nonetheless, (b) (6), (b) (7)(C) was concerned because (b) (6), (b) (7)(C) was asked to sign some documents related to arbitration and other company policies. (b) (6), (b) (7)(C) refused to sign them and discussed the issues with WHI (b) (6), (b) (7)(C). The investigator explained that an employee can never sign away their rights under the lay. (b) (7)(E)

During the final conference on March 16, 2011 with Ms. Savage the investigator explained to her what we had been told by (b) (6), (b) (7)(C). Ms. Savage reassured us that they understand the law and are committed to compliance at the corporate level. The investigator once again discussed the provisions of the breaks for nursing mothers under the FLSA with Ms. Savage. She did not have any additional questions.

Publications Provided:

The following publications were provided to Mr. Jay Walker by fax on February 9, 2011: Fact Sheet #73 and Section 15(a)(3) of the FLSA (See Exhibit D-3).

Recommendations

I recommend this file be closed administratively with no further action.

Correspondence:

Ms. Nanette Savage
Corporate Legal Representative
The Higbee Company
1600 Cantrell Road
Little Rock, AK 72201

Wildalí Lugo De Jesús

March 22, 2011

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1614284 Originating District: Atlanta GA District Office
Local Filing Number: 2011-111-17883 Investigating District: Atlanta GA District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 03/30/2011
Assignment Date: 03/30/2011

Employer Information

Trade Name: Dollar General Legal Name: Dolgencorp, LLC
Address: 3729 Macon Road EIN: 61-6852764
County: Muscogee
NAICS Code: 722110
Columbus, GA31907 No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 04/28/2009 BNPI:
To: 04/27/2011 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Full Investigation Future Compliance Agreed: ☐
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☒ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: 06/17/2011
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
No Violation found for this act / Compliance (no violations found)					\$0.00	\$0.00	
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
Failure to provide reasonable break time / Agree to Comply	1	0	\$0.00	\$0.00	\$0.00	\$0.00	
Failure to provide adequate space / Agree to Comply	1	0	\$0.00	\$0.00	\$0.00	\$0.00	
Retaliation / Agree to Comply	1	1	\$814.43	\$814.43	\$0.00	\$0.00	
FLSNM Totals:	1	1	\$814.43	\$814.43	\$0.00	\$0.00	
Total Violations Under FLSNM :		3					\$0.00

FMLA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
No Violation found for this act / Compliance (no violations found)					\$0.00	\$0.00	
FMLA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	1	Unduplicated Employees Agreed:	1
Total Amount BWs Computed:	\$814.43	Total Amount BWs Agreed:	\$814.43
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

WHISARD Compliance Action Report

Conclusions & Recommendations:

37.75Hrs. PPACA violations found. No shielded facility provided for nursing mothers to express milk in store located at 3846 St. Mary's Rd. Columbus, GA 31906 where (b) (6), (b) (7) worked. FC 6/3/11, ER Rep, Ms. Janis Winchester, agreed to come into compliance by providing a shielded place for nursing mothers at the store complaint worked and will also other location in the nation soon. BW \$814.43 will be certified mailed to (b) (7) by June 30, 2011. Rec. case be admin closed (b) (7)(E)

WHI Signature: _____ Date: 06/06/2011

Reviewed By: _____ Date: _____

Dolgencorp, LLC.
Dba Dollar General
100 Mission Ridge
Goodlettsville, TN 37072-2171
Store location:
3846 St. Mary's Rd.
Columbus, GA 31906
Case No. 1614284
EIN No. 26-3612527

FLSMM Narrative Report

Coverage

Dolgencorp, LLC., dba Dollar General, has more than 50 employees nationwide and is therefore subject to PPACA., Patient Protection and Affordable Care Act which took effect on March 23, 2010. (P.L.111-148).

The Law amended Section 7 of the FLSA. Section 4207: Reasonable break time for Nursing Mothers.

Period of investigation: 3/15/2009 - 3/14/2011 2 years, which is the period of time (b) (6), (b) (7)(C) was employed by the subject firm.

Nature of Business: The subject firm is a retail store selling general merchandise including foods.

MODO: TN is the MODO. (b) (7)(E)

Business structure: The firm is owned and operated by Richard W. Dreiling CEO.

The store where (b) (6), (b) (7)(C) worked was operated by (b) (6), (b) (7)(C), the store manager.

Branch Establishments: 20 stores in GA, 88,558 stores in the nation.

Current Workforce: (b) (4) employees including (b) (4) store manager paid by salary and (b) (4) employees paid by hour.

Prior History: None found. This is a first time investigation, under the PPACA.

Exemptions

No exemptions claimed or applicable.

Status of Compliance

Reason for investigation:

This case was initiated by (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) (b) (7)(E) was not given a place to express milk, other than a bathroom. The bathroom was not shielded from view and free from intrusion from co-workers and the public. (b) (6), (b) (7)(C), the store manager, admitted that there was no facility inside the store for any employee to express milk as of April 6, 2011 (See Ex. B-1, D-2).

(b) (6), (b) (7)(C) was forced to turn (b) (6), (b) (7)(C) back towards the public

while (b) (6), (b) (7)(C) expressed milk since there was no place provided that was shielded from view and free from intrusion from co-workers and the public (See D-2). Whenever customers went by the break area, where (b) (6), (b) (7)(C) sat to express milk, they either stuck their head to see what (b) (6), (b) (7)(C) was doing, asked where the rest room is located, or they asked (b) (6), (b) (7)(C) to help them to locate merchandise in store. Some co-workers felt sorry for (b) (6), (b) (7)(C) and would offer their assistance to sit next to (b) (6), (b) (7)(C) to block customers or other co-workers.

The store manager, (b) (6), (b) (7)(C), gave (b) (6), (b) (7)(C) 15 minutes break time, unpaid, after (b) (6), (b) (7)(C) clocked out, to express milk from 9/27/2010 to mid Nov. 2010. (b) (6), (b) (7)(C) would clock back in after (b) (6), (b) (7)(C) finished expressing milk.

After mid Nov. 2010, (b) (6), (b) (7)(C) refused to give (b) (6), (b) (7)(C) reasonable break time to express breast milk for (b) (6), (b) (7)(C) nursing child even (b) (6), (b) (7)(C) could use (b) (6), (b) (7)(C) break to go home to express milk, when (b) (6), (b) (7)(C) requested the break time. The reason given to (b) (6), (b) (7)(C) was that Company policy changed, only the assistant managers and store manager get breaks, not the non-management employees.

The store manager (b) (6), (b) (7)(C) also cut (b) (6), (b) (7)(C) hours from between 23 and 29 hours to 12 hours from mid Nov. 2010. (b) (6), (b) (7)(C) was forced to find another job that would guarantee the amount of (b) (6), (b) (7)(C) original pay based on (b) (6), (b) (7)(C) original hours scheduled to work.

(b) (6), (b) (7)(C) found a job where (b) (6), (b) (7)(C) could work 40 hours a week and planned to start (b) (6), (b) (7)(C) new job right after (b) (6), (b) (7)(C) quit. (b) (6), (b) (7)(C) gave the store manager 2 week notice of separation. (b) (6), (b) (7)(C) cash register drawer started to have shortage, which never happen in the past 2 years of (b) (6), (b) (7)(C) employment. (b) (6), (b) (7)(C) was scared that the shortage was caused by (b) (6), (b) (7)(C) resignation so (b) (6), (b) (7)(C) decided to quit working there 2 weeks earlier so the shortages would not keep happening.

Investigative results of (b) (6), (b) (7)(C) (b) (7)(E)

PPACA: violation found.

Back wages were computed based on reduction in hours and 2 weeks of lost wages:

Total Back wage \$814.43 include the following two parts:

1. \$460.13, the Wage from work hours cut by the store manager from 2/19/2011 to 3/14/2011.

(b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) hours were cut to 12 hours after mid November, 2010, but the time records and payroll records revealed that (b) (6), (b) (7)(C) hours started to drop to less than half of (b) (6), (b) (7)(C) usually worked starting the week ending 2/19/2011. The loss of (b) (6), (b) (7)(C) wage due to the hours cut is computed below.

2. \$354.30, the Wage lost between the last day working for (b) (6), (b) (7)(C) former employer and the starting day of (b) (6), (b) (7)(C) new employer, total 2 weeks, from 3/15/2011 to 3/27/2011.

(b) (7)(E)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Disposition

Final conference with Ms. Janis Winchester, Employee Relationship Manager, in TN, was held on June 3, 2011 via phone by WHI (b) (6), (b) (7)(C).

Employer agreed the following:

1.

To pay back wage \$814.43 to (b) (6), (b) (7)(C) by 6/1/2011.

2.

To start a project to provide a place shielded from view and free from intrusion from co-workers and the public. The store where (b) (6), (b) (7)(C) worked will be the store on top of the list.

3.

To come into compliance immediately to allow any employee who is a nursing mother to take reasonable break time to express breast milk for nursing child for 1 year after the child's birth each time any employee has need to express the milk. Such policy will be communicated with employees and be effective immediately.

Civil Money Penalty (CMP): not recommended.

CMP was explained. Ms. Winchester was informed that CMP could apply if her company does not come into compliance with the requirement of PPACA or if Wage and Hour Division conducts another investigation and find her company not in compliance.

(b) (6), (b) (7)(C) notification:

(b) (6), (b) (7)(C) was notified on June 3, 2011 by phone.

All future correspondence should be sent to the following manager at the following address:

Ms. Janis Winchester
Employee Relationship Manager
Dolgencorp, LLC.
Dba Dollar General
100 Mission Ridge
Goodlettsville, TN 37072-2171
Tel: 615-855-5854

Recommendation: Administrative closure (b) (7)(E)
[REDACTED]

Publication provided: FS #73, PPACA were faxed to Ms. Winchester on Final Conference day.

(b) (6), (b) (7)(C)
[REDACTED]

Wage and Hour Investigator
June 6, 2011

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1635529 Originating District: Baltimore MD District Office
Local Filing Number: 2012-118-07717 Investigating District: Baltimore MD District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 11/01/2011
Assignment Date: 11/01/2011

Employer Information

Trade Name: Chick-Fil-A Ingleside
Address: 5668 Baltimore National Pike

Catonsville, MD 21228

Legal Name: William James Barge III
EIN: 26-0035580
County: Baltimore
NAICS Code: 72221
No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 11/30/2009 BNPI:
To: 11/30/2011 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Full Investigation Future Compliance Agreed: ☐
Compliance Status: Compliance (no violations found) Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

FLSANM, (b) (7)(E) ees were not allowed to express milk when requested. A full inv. was conducted to determine compliance. EEs wanted to retract (b) (7)(E) in fear of losing job and declined to be interviewed. Thus, a violation could not be determined at this time. ER was found to be in compliance with OT, MW, RK and CL. I recommend this case be administratively closed (b) (7)(E)

WHI Signature: _____ Date: 01/11/2012

Reviewed By: _____ Date: _____

William James Barge III
Dba Chick-Fil-A
5668 Baltimore National Pike
Catonsville, MD 21228
Phone: 410-788-4063
Fax: 410-788-4064
Case ID: 1635529
FEIN#: 26-0035580

FLSNM NARRATIVE REPORT

OVERVIEW

This case was assigned based upon (b) (7)(E) (b) (6), (b) (7)(C) from employees from subject firm, that nursing mothers are not provided adequate time or place to express milk. Thus, violating the Patient Protection and Affordable Care Act signed into law by the President on March 23, 2010. Whereby it states that a nursing mother must have private accommodations to express milk for up to 1 year of newborn birth. A full investigation was conducted by this Investigator to determine compliance.

COVERAGE

Employee

Employees are non-exempt from FLSA Section 7(a) hourly paid employee. Additionally, the employees need to express milk for their nursing children is within one year after the children's birth. (b) (7)(E)

Employer

The firm is a Sec. 3(s)(1) enterprise and all employees are covered on an enterprise basis for the entire period of the investigation. The firm's ADV per Ms. Stephanie K. Baron, Attorney, is greater than \$500,000 per year (**See Exhibit C-1**) and it employs two or more employees who handle, sell, or otherwise work on goods or materials that have been moved in or produced for commerce by any person.

Period of Investigation:

The period of investigation for the above firm commenced on November 30, 2009 and concluded on November 30, 2011.

The primary contact person throughout the course of the investigation was attorney Stephanie K. Baron. She can be contacted at (410) 385-3463.

HISTORY

A MODO search revealed Baltimore DO as the MODO. No history was found for the subject firm.

EXEMPTIONS

13(a) (1):

None

STATUS OF COMPLIANCE

(b) (7)(E) (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) (b) (7)(E) nursing mothers were not provided adequate time or place to express milk. When this Investigator contacted (b) (6), (b) (7)(C) to additional questions, (b) (6), (b) (7)(C) indicated the employees were afraid to talk to this Investigator in fear of losing their jobs. (b) (7)(E)

An employee interview performed revealed that one employee had asked (b) (6), (b) (7)(C) time to express milk and (b) (6), (b) (7)(C) allowed to go to the restroom (b) (6), (b) (7)(C) has not actually had to express milk in a public restroom. **(See Exhibit B-1)** This Investigator asked the employee for (b) (7)(E)

Sec. 6:

Violations were not (b) (7)(E)

Sec. 7:

Violations were not (b) (7)(E)

Section 11:

Violations were not (b) (7)(E)

Section 12:

Violations were not (b) (7)(E)

DISPOSITION

A final conference was held on January 11, 2012 at the establishment. Present were Mr. Barge, Ms. Baron and this Investigator. This Investigator advised them of the basic minimum wage, overtime, record keeping, child labor, coverage and exemptions as it pertained to the

firm. This Investigator also, advised them of the Patient Protection and Affordable Care Act signed into law by the President on March 23, 2010. Mr. Barge indicated was not aware of it.

Employer was advised that pursuant to subject investigation, the firm was found to be in compliance.

Publications Provided

The following publications were provided to employer:

- Fact Sheet #73
- Fact Sheet #2A
- WH 1282
- WH 1312
- WH 1318

(b) (6), (b) (7)(C) Notification

(b) (6), (b) (7)(C) was notified via phone call.

Recommendation

I recommend case be closed (b) (7)(E)

(b) (6), (b) (7)(C)

WHI

1/11/12

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1639468 Originating District: Baltimore MD District Office
Local Filing Number: 2012-118-07809 Investigating District: Baltimore MD District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 12/12/2011
Assignment Date: 12/12/2011

Employer Information

Trade Name: Claire's Stores Legal Name: Claire's Stores, Inc.
Address: 200 East Pratt Street #3010 EIN: 36-2025307
County: Baltimore City
NAICS Code: 448310
Baltimore, MD 21202 No. Of Employees: (b) (6)

Investigation Information

Period Investigated From: 12/27/2009 BNPI:
To: 12/27/2011 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Full Investigation Future Compliance Agreed: ☐
Compliance Status: Compliance (no violations found) Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

FLSNM, 23.75 HOURS..ER IS A RETAIL JEWELRY STORE.. (b) (7)(E) NO AREA TO EXPRESS MILK AND ER NOT GIVING BREAKS TO DO SO.. (b) (7)(E) BASED ON DOCUMENTATION PROVIDED BY ER AND INTERVIEW STATEMENTS..ALSO, (b) (7)(E) DID NOT COOPERATE WITH INVESTIGATION..FLSA INVESTIGATION WAS ALSO COMPLETED ON NAMED STORE..

ER IS IN COMPLIANCE WITH FLSA AND FLSNM
RECOMMEND CLOSE

WHI Signature: _____ Date: 01/09/2012

Reviewed By: _____ Date: _____

Claire's Stores Inc.
Dba Claire's Stores #5994
200 East Pratt Street #3010
Baltimore, MD 21202
Phone: 410-539-8593
Case ID: 1639468
FEIN#: 36-2025307

FLSNM NARRATIVE REPORT

OVERVIEW

This case was assigned (b) (7)(E) (b) (6), (b) (7)(C) with this office on 11/28/11. (b) (6), (b) (7)(C) (b) (7)(E) subject firm did not provide (b) (6), (b) (7)(C) with a private area to express milk and the lack of breaks to do so. Thus, violating the Patient Protection and Affordable Care Act signed into law by the President on March 23, 2010. Whereby it states that a nursing mother must have private accommodations to express milk for up to 1 year of newborn birth and breaks must be awarded to do so. A full investigation was conducted by Inv (b) (6), (b) (7)(C)

COVERAGE

Employee

(b) (6), (b) (7)(C) is non-exempt from FLSA Section 7(a) hourly paid employee. Additionally, (b) (6), (b) (7)(C) need to express milk for (b) (6), (b) (7)(C) nursing child is within one year after the child's birth. (b) (7)(E)

However, the employer assumed that this investigation was related to (b) (6), (b) (7)(C) as a result of (b) (6), (b) (7)(C) recent termination, lengthy history of disciplinary actions and sole communication involving HR Dept and (b) (6), (b) (7)(C) surrounding the FLSNM prior to (b) (6), (b) (7)(C) termination for job abandonment.

(b) (6), (b) (7)(C) was being investigated for theft of merchandise and time clock fraud. The identity of (b) (6), (b) (7)(C) was kept confidential on my behalf.

Employer

The firm is a covered enterprise under section 3(s) (1) (A) of the FLSA. Claires Inc. is a corporate owned enterprise with over 3,000 stores nationwide and about (b) (4) employees nationwide.

Period of Investigation: The period of investigation for the above firm commenced on December 27, 2009 and concluded on December 27, 2011.

The primary contact person throughout the course of the investigation was Human Resources Representative Diane Strybel and District Manager Trish Ecker.

HISTORY

Chicago DO is the MODO for the enterprise. (b) (7)(E) Prior FLSA history exists..(Chicago DO) OT..#414627..8-14-98..ATP, (Baltimore DO)#1115328..1-11-01-ATP.

EXEMPTIONS

13(a) (1):

None

STATUS OF COMPLIANCE

Time and Location of Breaks

Employers are required to provide a reasonable amount break time to express milk as frequently as needed by the nursing mother. The frequency of breaks needed to express milk as well as the duration of each break will likely vary.

A bathroom, even if private, is not a permissible location under the Act. The location provided must be functional as a space for expressing breast milk. If the space is not dedicated to the nursing mother's use, it must be available when needed in order to meet the statutory requirement. A space temporarily created or converted into a space for expressing milk or made available when needed by the nursing mother is sufficient provided that the space is shielded from view, and free from any intrusion from co-workers and the public.

Interviews (See **Exhibit B-1 to B-3**) performed and documentation provided by the employer (See **Exhibit D-1**) satisfied the burden of proof on their behalf to prove (b) (7)(E) to be false. The aforementioned revealed that (b) (6), (b) (7)(C) can express milk while on unpaid breaks when needed without restrictions. A tour of the establishment was performed. The space available to express milk is a room(12x12) in the back of the store which is used to store supplies. In the room, is a toilet, 2 chairs and 2 sinks with lockers. The door to this room can be locked for privacy. There are no cameras in such room. It is shielded from the public and provides privacy to the nursing mother. Such room is used by store employees (5) only. This space satisfies the statutory requirement.

Sec. 6:

Violations were neither (b) (7)(E) nor found. A review of payroll and time records for the named store were reviewed (See **Exhibit A-1, Profile**)

Sec. 7:

Violations were neither (b) (7)(E) nor found. A review of payroll and time records for the named store were reviewed (See **Exhibit A-1, Profile**)

Section 11:

Violations were neither (b) (7)(E) nor found.

Section 12:

Violations were neither (b) (7)(E) nor found. A review of records naming employees company wide that were under the age of 18 was performed. Such review did not reveal minors employed under the age of 16. No HO's are present in the work environment.

DISPOSITION

On 1/5/12 this investigator conducted a final conference at the store in questions with District Manager Trish Ecker. This Investigator advised her of the basic minimum wage, overtime, record keeping, child labor, coverage and exemptions as it pertained to the firm. I also discussed the Patient Protection and Affordable Care Act and how it relates to the nursing mother provision for breaks(FLSNM) and its statutory requirements. Employer was advised that pursuant to subject investigation, the firm was found to be in compliance with the FLSA and FLSNM.

Employer disputes (b) (7)(E) as they state that (b) (6), (b) (7)(C) was provided reasonable and private accommodations to express milk whenever possible while on breaks (See **Exhibit D-1**).

Publications Provided

The following publications were provided to employer:

- I. Fact Sheet #73
- II. Handy Reference Guide FLSA

(b) (6), (b) (7)(C) Notification

(b) (6), (b) (7)(C) did not respond to phone or mail attempts throughout the course of the investigation (See **Exhibit D-2**).

Recommendation

I recommend case be closed (b) (7)(E)

(b) (6), (b) (7)(C)

WHI

1/9/12

WHISARD Compliance Action Report

U.S. Department of Labor Wage and Hour Division

Case ID: 1640083 Originating District: Pittsburgh PA District Office
Local Filing Number: 2012-282-00232 Investigating District: Pittsburgh PA District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 12/16/2011
Assignment Date: 12/21/2011

Employer Information

Trade Name: Allegheny Valley School
Address: 315 West Prospect Avenue

Pittsburgh, PA 15205

Legal Name: NHS - Allegheny Valley School, LLC
EIN: 25-1094911
County: Allegheny
NAICS Code: 623210
No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 01/02/2010 BNPI:
To: 12/24/2011 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Full Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

37.25 FLSNM inv. Sec 3s1B ent. coverage. Violation found with respect to requirement that EE use unsanitary Dental Office to express breast milk. ER immediately complied when confronted with EE concerns. No (b) (7)(E) retaliation. FC 2/15/12 via phone w/ Atty. Bernie Schneider and Director M. Miller. ATC Recommend closing administratively (b) (7)(E). HRG, CL101 and NM FS provided at IC.

WHI Signature: _____ Date: 02/15/2012

Reviewed By: _____ Date: _____

NHS - Allegheny Valley School, LLC

Patricia Hillman Miller Campus

EIN: 25-1094911

315 West Prospect Avenue

Pittsburgh, PA 15205

Case ID: 1640083

412-921-7755

Local Filing ID: 2012-282-00232

Complaint Alleging Violation of FLSA Section 7(r) – Break Time for Nursing Mothers

BASIS OF INVESTIGATION

Investigation was initiated (b) (7)(E) (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) was not provided with a place to express breast milk and that as a result of (b) (6), (b) (7)(E) attempt to have the company comply with the FLSA, (b) (6), (b) (7)(C) was terminated from (b) (6), (b) (7)(C) employment with the Allegheny Valley Schools. (WH-3)

(b) (6), (b) (7)(C) was employed as a part time registered nurse with the Allegheny Valley Schools at the Patricia Hillman Miller Campus from July 20, 2007 through September 25, 2011. (b) (6), (b) (7)(C) was paid an hourly rate of (b) (6), (b) (7)(C) at the time of her separation. (Exhibit B-1)

(b) (6), (b) (7)(C)

A statement was taken from (b) (6), (b) (7)(C) on January 9, 2011. On January 13, 2011, Investigator (b) (6), (b) (7)(C) received copies of letters sent to Human Resources by (b) (6), (b) (7)(C) along with accompanying photographs of the bathroom and Dental Office that (b) (6), (b) (7)(C) was originally instructed to use for the expressing of breast milk. (E-8, E-9, E-10) Follow up conversations with the (b) (6), (b) (7)(C) occurred on January 9, 2012 and again on February 9, 2012. (B-1)

COVERAGE

NHS – Allegheny Valley School, LLC d/b/a Allegheny Valley School is located at 1996 Ewings Mills Road in Coraopolis, PA 15108. Subject entity is a subsidiary of NHS Human Services, Inc. located at

620 Germantown Pike, Lafayette Hill, PA 19444 and operates 63 facilities and programs in the Commonwealth of Pennsylvania that provide aid, instruction and rehabilitation for mentally retarded children and adults. One of these facilities, The Patricia Miller Hillman Campus (PHMC) in Pittsburgh, PA is the focus of this investigation. Allegheny Valley School is a covered entity under Section 3(s)(1)(B) of the FLSA as engaged in the operation of an institution, the primary purpose of which is to provide care for the sick, mentally ill or defective who reside on site. Allegheny Valley Schools employ (b) (4) employees within the enterprise. There are (b) (4) employed at PHMC.

SITE VISIT

A call was placed to PHMC Director Michelle Miller on January 13, 2011 and an Initial Conference was set up for January 18, 2012. An appointment letter was sent to Ms. Miller via fax on this same date requesting necessary documentation. (Exhibit D-1) At the request of Employer's counsel, the Initial Conference was rescheduled for January 20th so that Attorney Bernie Schneider could be present. Investigator (b) (6), (b) (7)(C) agreed to the request.

On Friday, January 20, 2012, a visit to the Patricia Miller Hillman Campus was conducted by Investigator (b) (6), (b) (7)(C). Present throughout the Initial Conference was PHMC Director Michelle Miller and Allegheny Valley School Outside Counsel, Bernie Schneider. Investigator (b) (6), (b) (7)(C) provided Ms. Miller with a copy of the HRG, CL-101 and Fact Sheet #73.

The Employer allowed Investigator (b) (6), (b) (7)(C) to tour the facility with particular attention paid to the rooms in which (b) (6), (b) (7)(C) expressed breast milk or was directed to use for this purpose. Also, the patient room and bathroom at issue in (b) (6), (b) (7)(C) termination were viewed. The Employer allowed the Investigator to take pictures of any unoccupied rooms implicated in the investigation. (Please see E-1, E-2, E-3, E-4) Additionally, Ms. Miller and Mr. Schneider allowed Investigator (b) (6), (b) (7)(C) full access to (b) (6), (b) (7)(C) file and made copies where appropriate.

STATUS OF COMPLIANCE

Section 7(r)(1)(A) Reasonable Break Time

No violations of section 7(r)(1)(A) were (b) (7)(E) (b) (6), (b) (7)(C) or found to have occurred as a result

of the investigation. (b) (6), (b) (7)(C) works a 12 hour shift and is provided with the ability to take a 30 minute unpaid meal period and two 15 minute paid breaks at any time during her shift in accordance with (b) (6), (b) (7)(C) needs. (b) (6), (b) (7)(C) advised that (b) (6), (b) (7)(C) was always able to express as needed and typically did this on average, three times per shift for 15 to 20 minutes at a time. (B-1)

Section 7(r)(1)(B) Location

No violation of section 7(r)(1)(B) (b) (7)(E) The law requires an employer to provide a “place, other than a bathroom, that is shielded from view and free from intrusion from co-workers and the public, which may be used by an employee to express breast milk”. There were numerous locations used by or directed to be used by (b) (6), (b) (7)(C) in furtherance of her Section 7 rights. Each of these locations will be discussed in turn.

Doctor's Office. (b) (6), (b) (7)(C) From July 16, 2011 to August 27, 2011, (b) (6), (b) (7)(C) utilized a Doctor's Office to express breast milk without incident. (B-1) The Doctor's Office was not a bathroom, it was a completely secluded office with four walls that extended to the ceiling and entry by way of a door that locked on the inside and could only be accessed by key. There was a window, however it was a second floor office and there would not have been a danger of the window allowing for intrusion by prying eyes. Moreover, the window did have blinds that could have pulled shut. A sink was available as were any necessary outlets. The office was previously used by (b) (6), (b) (7)(C) after the birth (b) (6), (b) (7)(C) (B-1) The Doctor's Office met the requirements of Section 7(r)(1)(B) of the Act. *(Please see photos of the Doctor's Office at Exhibit E-4 as it appeared on 1/20/12.)*

Second Floor Bathroom. On August 27, 2011, (b) (6), (b) (7)(C) was instructed by (b) (6), (b) (7)(C) Supervisor, (b) (6), (b) (7)(C), to use the Second Floor Bathroom to express (b) (6), (b) (7)(C) breast milk. *(Please see photos of the Bathroom at Exhibit E-1 as it appeared on 1/20/12.)* On its very face, the Second Floor bathroom would have been a blatant violation of Section 7(r)(1)(B) of Act, however, (b) (6), (b) (7)(C) refused to use the bathroom and was then permitted to use the Conference Room, also on the second floor. (b) (6), (b) (7)(C) never used the Second Floor Bathroom to pump.

Conference Room. From August 27 until (b) (6), (b) (7)(C) termination, (b) (6), (b) (7)(C) was given the ability

to use the Conference Room located on the second floor of the facility to pump. (*Please see the photos of the Conference Room at Exhibit E-2 as it appeared on 1/20/12.*) The conference room was not a bathroom. It was a large, secluded room with three solid walls and a fourth wall that had two windows. The windows were each equipped with blinds that could be closed to prevent intrusion from the outside. The office was equipped with a large conference table and nearly a dozen chairs. The room had electrical outlets and a hand sanitizer wall unit. Furthermore, a bathroom was directly around the corner from the office, within 15 feet. Entry to the Conference Room was occasioned by way of one door that could be locked from the inside to ensure privacy. Furthermore, the Conference Room was actually located in an area of the facility that did not have employees working out of it during the weekend PM and 3rd shift hours worked by (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) did not express any issues with use of the Conference Room in the first two discussions (b) (6), (b) (7)(C) had with this investigator on January 6, 2012 or January 9, 2012. (B-1) Additionally, (b) (6), (b) (7)(C) wrote three letters to Human Resources regarding (b) (6), (b) (7)(C) breast feeding issues with PHMC and never mentioned any issues with the use of the conference room. (E-8, E-9, E-10) The first time (b) (6), (b) (7)(C) mentioned any concerns with the use of this room was in a follow up call with the Investigator on February 10, 2012 where (b) (6), (b) (7)(C) advised that there were constantly people banging on the door while (b) (6), (b) (7)(C) was trying to pump. (b) (6), (b) (7)(C) advised that they would yell that (b) (6), (b) (7)(C) shouldn't be in there or they would ask why (b) (6), (b) (7)(C) was in there. (B-1) (b) (6), (b) (7)(C) didn't know who they were and when pressed on the fact that there was no one employed in the Administrative portion of the facility during the third shift weekend hours (b) (6), (b) (7)(C) worked, (b) (6), (b) (7)(C) admitted that (b) (6), (b) (7)(C) didn't know who it could have been. (B-1) (b) (6), (b) (7)(C) added that there was a time that the AM shift supervisor tried to use (b) (6), (b) (7)(C) key to gain entry while (b) (6), (b) (7)(C) was pumping, so (b) (6), (b) (7)(C) started putting chairs against the door. (b) (6), (b) (7)(C) said (b) (6), (b) (7)(C) told this to (b) (6), (b) (7)(C) once, but (b) (6), (b) (7)(C) could not recall when or what response (b) (6), (b) (7)(C) received. (B-1)

From September 3, 2011 until (b) (6), (b) (7)(C) separation, (b) (6), (b) (7)(C) used the Conference Room without further interruption or discussion from any members of management. (B-1)

In review of the facts of the current situation, the Conference Room met the requirements of Section 7(r)(1)(B) of the Act. The office was a secluded as an area could be for the purposes of expressing

breast milk. The amenities necessary for the accomplishment of this task were in the room with (b) (6), (b) (7)(C) or close by. The room was private and secured by an inside lock. It is the opinion of the Investigator that (b) (6), (b) (7)(C) assertions on the 9th of February that there were constantly people knocking on the doors and a supervisor that attempted to gain entry with (b) (6), (b) (7)(C) key, do not hold up with the facts as presented prior to the most recent conversation with (b) (6), (b) (7)(C). The letters (b) (6), (b) (7)(C) wrote to Human Resources at the time that these issues were occurring were incredibly detail oriented and never mentioned these newly identified intrusions or interruptions. Moreover, (b) (6), (b) (7)(C) did not mention these interruptions in the first two conversations that (b) (6), (b) (7)(C) had with Investigator (b) (6), (b) (7)(C), though other details provided during those conversations were quite vivid.

Dental Office. On September 3, 2011, (b) (6), (b) (7)(C) was instructed to use the Dental Office in the basement for the purpose of expressing breast milk. (b) (6), (b) (7)(C) attempted to do so but was forced to stop when a coach roach crawled out of the register. Upon further review, (b) (6), (b) (7)(C) found dead bugs in the corners of the walls, live bugs and bug larva on the floor, a sink and counter tops that were unclean, cobwebs on the ceiling and in window corners and ceiling tiles that had significant water damage. (b) (6), (b) (7)(C) took photographs of the state of the Dental Office on the night in question. Photographs from 9/3/11 can be found at Exhibit E-7. Furthermore, the office was located in the basement and had a series of windows covering one wall. The room could be seen from the parking lot and there were no blinds on the windows which could restrict outside view. (b) (6), (b) (7)(C) brought these concerns to (b) (6), (b) (7)(C) Supervisor's attention and was instructed to pump in the Conference Room as (b) (6), (b) (7)(C) had the week prior. During the Initial Conference, Director Michelle Miller advised that (b) (6), (b) (7)(C) called Ms. Miller and advised that the conditions in the Dental Office were unsanitary and agreed that the office was not fit for pumping breast milk. (b) (6), (b) (7)(C) was never again advised to use the Dentist Office. *(Please see photos of Dentist Office at E-3 as it appeared on 1/20/12).*

At the time of (b) (6), (b) (7)(C) assignment to the Dental Office to pump, strict review of Section 7(r)(1)(B) may have allowed for compliance with the Act if not for the windows. (b) (6), (b) (7)(C) did provide cardboard boxes which (b) (6), (b) (7)(C) taped to the windows to accommodate (b) (6), (b) (7)(C) concerns about privacy. (E-7d) However, the bigger issue was with the cleanliness of the space. While the Act does not state that the room must meet a certain level of cleanliness, it seems apparent that the Act's requirement that the space "not be a bathroom" was as a result of a direct need to ensure that the location

provided to nursing mothers met certain sanitary standards. This position is further underscored with the following language from the Federal Register:

"The Department does not believe, however, that a locker room where there is not sufficient differentiation between the toilet area and the space reserved for expressing breast milk would meet the requirements of the law because it presents a similar health and sanitation concerns as a bathroom."

(Federal Register, December 21, 2010 at 80076)

While the language of the federal register speaks directly to a locker room that is not sufficiently differentiated from a toilet area, the language is still telling in that it underscores the presumption that the prohibition of designating a bathroom for nursing mothers was the direct result of concerns regarding the expressing of breast milk in a space or area that is not sanitary or one that poses the same health and sanitary issues as presented in a bathroom. Therefore, the Dental Office was not a location that would have been acceptable under the Act as a space for nursing mothers to express breast milk.

It should be noted that the Employer did not contest the unsanitary state of the Dentist office when confronted by (b) (6), (b) (7)(C) and did not require (b) (6), (b) (7)(C) to pump in the office once the concerns were brought to the supervisor's attention. Moreover, even in the Initial Conference, Ms. Miller advised Investigator (b) (6), (b) (7)(C) supervisor agreed that the office was not in acceptable order and needed cleaned. Though immediate compliance with the Act was undertaken by the Employer when so advised of the sanitary concerns, this immediate remedy does not act to negate the initial violation that occurred by having (b) (6), (b) (7)(C) express in the unsanitary environment itself on September 3, 2012.

Section 15(a)(3) Retaliation

No violations of section 15(a)(3)(A) (b) (7)(E) (b) (6), (b) (7)(C) (b) (7)(E) (b) (6), (b) (7)(C) was terminated as a result of (b) (6), (b) (7)(C) advancement of protections afforded to (b) (6), (b) (7)(C) under Section 7 of the Act. However, review of the circumstances of the case do not, in this Investigator's opinion, substantiate findings in (b) (6), (b) (7)(C) favor.

Terminating Event. The Employer has advised that (b) (6), (b) (7)(C) was terminated for failing to follow Doctor's orders regarding a patient under (b) (6), (b) (7)(C) care who had to have the contents of (b) (6), (b) (7)(C) gastric bag re-fed twice daily. The re-feeding process requires the transfusion of the contents of the resident's gastric bag into a gravity feeding bag and attaching it to a gastric port on the resident. While this re-feeding occurs, the gravity feeding bag is placed on an IV pole and hangs next to the resident's bed. The process of connecting the gravity bag to the resident may take only a few minutes, but the re-feed itself can take 10 to 35 minutes depending on the amount of fluid in the bag. During this time, the IV pole would be visible in the room. (B-1)

(b) (6), (b) (7)(C) was the nurse on duty on the evening of the 24th of September through the 25th of September on the third floor. (b) (6), (b) (7)(C) would have been responsible for re-feeding the contents of the gastric bag to the resident in question once during (b) (6), (b) (7)(C) shift. In addition to (b) (6), (b) (7)(C) the Registered Nurse on duty, the resident in question had a direct care aide assigned to him. (b) (6), (b) (7)(C) responsibility was to round on each resident assigned to (b) (6), (b) (7)(C) every 30 minutes. Furthermore, the patient in question had a roommate who also had a direct care specialist assigned to (b) (6), (b) (7)(C) care. Again, the roommate would have been checked upon every 30 minutes by (b) (6), (b) (7)(C) direct care aid. There was only one resident on (b) (6), (b) (7)(C) floor who had a gastric bag.

On the morning of the 25th of September, a gastric bag was found in the bathroom garbage can on the third floor, full of gastric juices. Upon reporting to work on the 25th of September for (b) (6), (b) (7)(C) PM shift, (b) (6), (b) (7)(C) was questioned regarding the gastric re-feed of the patient in question. (b) (6), (b) (7)(C) advised that (b) (6), (b) (7)(C) had re-fed the gastric contents as required. (b) (6), (b) (7)(C) pointed to (b) (6), (b) (7)(C) chart to advise of this. However, at the same time that (b) (6), (b) (7)(C) charted as starting the patient's gastric re-feed, (b) (6), (b) (7)(C) had another patient seize. Charting on the patient was done every few minutes and was found to conflict with (b) (6), (b) (7)(C) charting for the gastric re-feed patient. The company instigated a detailed investigation whereby nearly a dozen employees were questioned regarding the events of September 24th and 25th with respect to the gastric re-feed.

When questioned by Investigator (b) (6), (b) (7)(C) regarding the discrepancies identified, (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) advised that the charting (b) (6), (b) (7)(C) completed was not necessarily correct with respect to the charting of the gastric re-feed. (B-1) (b) (6), (b) (7)(C) advised that charting of medication given had to be 100% accurate, however, the charting of treatments, such as the gastric re-feed did not have to be as

accurate. (B-1) Therefore, this was probably what had happened on the night in question. (b) (6), (b) (7)(C) typically did the re-feed around 4:00 so (b) (6), (b) (7)(C) probably noted it then in the chart. (B-1) (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) starts the re-feed and goes on with (b) (6), (b) (7)(C) duties as the bag can re-feed without supervision. (B-1) (b) (6), (b) (7)(C) would then come back around at approximately 6:00 or 6:15 AM, take the gravity bag off of the IV and put on a new bag. (B-1) (b) (6), (b) (7)(C) confirmed that during this sometimes two hour period, the gravity bag would be hanging on the IV pole. (B-1) However, on the morning in question, the Employer's interviews with staff indicated that none of the direct care aides recall seeing the gastric bag or gravity bag being attended to by (b) (6), (b) (7)(C) nor did they see the gastric contents being re-fed. It is worth mentioning that the direct care aides rounded on the patient and (b) (6), (b) (7)(C) roommate every 30 minutes.

As a result of the investigation, the administration determined that (b) (6), (b) (7)(C) had not re-fed the gastric contents as required by Doctor's orders. (b) (6), (b) (7)(C) was therefore terminated. (E-5)

Prior Disciplinary Action. (b) (6), (b) (7)(C) had been disciplined previously for failing to follow established procedures in December of 2010 and January of 2011. Chart audits of (b) (6), (b) (7)(C) from 8/23/11 and 8/27/11 evidenced failure to comply with required documentation. Most notably, (b) (6), (b) (7)(C) received a final written warning on 9/25/11 at about 12:30 AM for an incident that occurred on September 11, 2011 whereby (b) (6), (b) (7)(C) was found to have intentionally failed to follow proper procedures for securing resident medication that was received from the Pharmacy. (E-6) (b) (6), (b) (7)(C) was written up for this infraction as was the nurse who was on duty prior to (b) (6), (b) (7)(C). Both individuals were written up for the offense given the severity of the situation and their dual responsibilities regarding medication received from the Pharmacy during shift change. (b) (6), (b) (7)(C) left the meeting with Administration and (b) (6), (b) (7)(C) direct supervisor and tore up the warning (b) (6), (b) (7)(C) had just received. (b) (6), (b) (7)(C) went back to work and it is on this shift that the issue with a patient's gastric bag occurred.

Analysis Regarding Retaliation. (b) (6), (b) (7)(C) was open in (b) (6), (b) (7)(C) discussions with Investigator (b) (6), (b) (7)(C) and was able to provide detailed information regarding (b) (6), (b) (7)(C) experiences at PHMC. (B-1) (b) (6), (b) (7)(C) had taken dozens of photographs and provided these in furtherance of her position. The Employer was also accommodating of this Investigator's request for information. Full access was provided to the establishment, photographs were permitted and ample opportunity to review (b) (6), (b) (7)(C) personnel file was granted. The company's documentation was meticulous and evidenced an

employee that appeared to have issues with (b) (6), (b) (7)(C) superiors and co-workers on numerous occasions throughout (b) (6), (b) (7)(C) employment. (b) (6), (b) (7)(C) confronted employees, complained about gossip and appeared to consistently feel that every discussion had with (b) (6), (b) (7)(C) and warning issued was unfair and occasioned by factors other than (b) (6), (b) (7)(C) performance. In (b) (6), (b) (7)(C) conversations with this Investigator, (b) (6), (b) (7)(C) denied having a phone call that the Administrator attested to having with (b) (6), (b) (7)(C) on the 4th of September and which the Administrator documented on that date. (B-1) (b) (6), (b) (7)(C) also denied conversations with Administration personnel that were again documented at the time they occurred and were witnessed by multiple individuals. (B-1) (b) (6), (b) (7)(C) gave facts on the 9th of February that were vital to (b) (6), (b) (7)(C), yet not mentioned in prior conversations with the Investigator or in (b) (6), (b) (7)(C) own letters submitted to HR at the time of the occurrences. (B-1, E-8, E-9, E-10) These facts have led to a lack of confidence in the position that the employee takes with respect to the final incident that necessitated (b) (6), (b) (7)(C) termination and which lays at the basis of (b) (6), (b) (7)(C) claims for retaliation.

It is without question that the Employer exacerbated their issues with (b) (6), (b) (7)(C) by not being fully aware of the requirements of the law and advising (b) (6), (b) (7)(C) to pump in a restroom, and then again in a Dental Office which was not sanitary. However, these issues were corrected immediately when (b) (6), (b) (7)(C) was given unfettered access to the Conference Room. By their own admissions, the Employer was not aware of the updates to Section 7 of the Act and improperly instructed the use of the bathroom – a matter that they have since corrected as an organization. However, at the time of (b) (6), (b) (7)(C) separation, the issue had been resolved to the Employer's knowledge as (b) (6), (b) (7)(C) was using the Conference Room for three weeks without issue. (b) (6), (b) (7)(C) termination was occasioned by the Employer's finding that (b) (6), (b) (7)(C) violated the standards of care that Employer mandates in order to comply with state and federal laws regarding the care of patients. This termination came within hours after a final written warning that (b) (6), (b) (7)(C) was frustrated over having received. While it is true that (b) (6), (b) (7)(C) performance was at issue after a period where (b) (6), (b) (7)(C) had expressed concerns over (b) (6), (b) (7)(C) rights under Section 7, the investigation did not yield any convincing evidence that there is a clear nexus between (b) (6), (b) (7)(C) concerns over a place to express milk and the company's identified and well-investigated reason for her termination.

DISPOSITION

A final conference was held via phone on Wednesday , February 15, 2012. Representing the Employer

at the Final Conference and throughout the investigation was Bernie Schneider, Esq., outside counsel for Allegheny Valley Schools as well as Michelle Miller, Director of Allegheny Valley Schools. Representing the Department of Labor was (b) (6), (b) (7)(C), Investigator.

Investigator (b) (6), (b) (7)(C) advised of the investigative process and the general requirements of Section 7 of the Act. The Employer was notified that the investigation was predicated upon (b) (7)(E) Section 7 of the Act and Section 15(a)(3). Coverage provisions of the Act were discussed. Writer ensured that the Employer understood that all of the company's employees are subject to the requirements of the Act unless applicable exemptions exist. However, Investigator underscored that no exemptions were tested at this time.

The company's lack of prior history under the FLSA was discussed and Investigator (b) (6), (b) (7)(C) explained the potential implications, including the possibility of civil money penalties for future violations

Investigator (b) (6), (b) (7)(C) then advised Atty. Schneider and Ms. Miller as to the violation that resulted from (b) (6), (b) (7)(C) being forced to express breast milk in the Dental Office on September 3, 2011 in violation of the requirements of the Act. It was underscored to the Employer that the evidence gathered in the course of the investigation included photographs of the state of the Dental Office and unsanitary conditions therein. Attorney Schneider took great exception to the Investigator's findings advising that the Dental Office could not be said to be anything other "unpristine" and that the law did not require Employers to find employees "pristine" locations to express breast milk. Furthermore, he object to the use of any photographs in the determination as there was no proof that (b) (6), (b) (7)(C) did not go into the Dental Office at a later date and take the photographs. He also proffered the position that there was no proof that (b) (6), (b) (7)(C) didn't bring in the bugs in question into the room (b) (6), (b) (7)(C) in order to bolster (b) (6), (b) (7)(C) claims. Attorney Schneider was reminded that his staff had agreed that the room was unacceptable and that (b) (6), (b) (7)(C) did not (b) (6), (b) (7)(C) possess access to a key to the office. Furthermore, it was far-fetched to believe that (b) (6), (b) (7)(C) "brought in" bugs to stage the room. Investigator (b) (6), (b) (7)(C) advised the Employer that while their concerns with the findings were noted, the violation would stand. However, the Investigator reiterated that while the violation occurred, it was also adequately proved that the company came into immediate compliance by allowing (b) (6), (b) (7)(C) to leave the Dental Office and express in the Conference Room for

the remainder of the night and until such time as she was terminated.

Finally, the Employer was advised that (b) (7)(E) regarding the Employer's retaliation against (b) (6), (b) (7)(C) for attempting to take advantage of the protections afforded by Section 7 (b) (7)(E) (b) (6), (b) (7)(C) advised that there was no evidence of a causal link between (b) (6), (b) (7)(C) raised concerns of violations of Section 7 by the Employer and (b) (6), (b) (7)(C) subsequent termination by the company for conduct that was in violation of the company's policies regarding abuse and neglect, conduct unbecoming and negligence in performance of duties.

Attorney Schneider Agree to Comply in the future reiterating his position that Employer remains under the impression that they were in compliance. Never-the-less, he agreed that the company would not be utilizing the Dental Office as a location for nursing mothers to express their breast milk in the future. However, they would ensure that a private space, other than a bathroom, would be provided for nursing mothers that was free from intrusion and shielded from view and would allow nursing mothers the statutorily required opportunity to express breast milk.

Attorney Schneider requested reconsideration of the cited violated. He further asked to be permitted to present his position in writing for reconsideration at the District Office. Investigator (b) (6), (b) (7)(C) advised that the information he presented during the final conference would be reviewed before issuing a final determination.

Later that same afternoon, Investigator (b) (6), (b) (7)(C) contacted Attorney Schneider by phone and advised that after further review of the evidence secured in the investigation, the determination would stand. He was advised that he could certainly send any documentation that he would like regarding his position of the violation but that it would not serve to have the determination reconsidered. Any letter sent on the company's behalf would be placed in the case file. Attorney Schneider thanked the Investigator for (b) (6), (b) (7)(C) time and ended the call with no further discussion.

(b) (6), (b) (7)(C) was contacted by phone on February 15, 2012 to advise as to the findings of the investigation. (b) (6), (b) (7)(C) advised Investigator (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) did not need back any of the materials that (b) (6), (b) (7)(C) had provided during the course of the investigation.

RECOMMENDATIONS

(b) (7)(E) the recommendation
is to close the case administratively with no further action.

Send all necessary correspondence to:

Michelle Miller, Director

Allegheny Valley School

Patricia Hillman Miller Campus

315 West Prospect Avenue

Pittsburgh, PA 15205

With a copy to:

Bernard Schneider, Esq.

Brucker, Schneider & Porter

300 Weyman Road

Suite 320

Pittsburgh, PA 15236

PUBLICATIONS

FLSA Handy Reference Guide and WH-1330 was provided at the initial conference.

(b) (6), (b) (7)(C), Investigator
Wage & Hour Division
United States Department of Labor

February 15, 2012

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1641586 Originating District: Boston MA District Office
Local Filing Number: 2012-133-04682 Investigating District: Boston MA District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 01/06/2012
Assignment Date: 01/06/2012

Employer Information

Trade Name: MA Dept. of Public Health
Address: 305 South St.

Jamaica Plain, MA02130

Legal Name: Commonwealth of Mass.
EIN: 04-6002284
County: Suffolk
NAICS Code: 09390
No. Of Employees: 385

Investigation Information

Period Investigated From: 03/23/2010 BNPI:
To: 02/02/2012 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☒
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	3	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

30 hrs. Limited Inv. Coverage est under 3(s)(1)(c) of the Act. (b) (7)(E) ER space designated for nursing mothers was insufficient/inaccessible. (b) (7)(E) Firm has 3-4 nursing mothers; lactation room provided is only available for single use. FC held 2/2/2012 with C. Dunn & G. Connolly. ER ATC. (b) (7)(E) Rec. concluding case with follow-up in 6 months per DD Rioux.

WHI Signature: _____ Date: 02/06/2012

Reviewed By: _____ Date: _____

Whisard #1641586
Local Filing ID: 2012-133-04682

Commonwealth of Massachusetts
d/b/a Massachusetts Department of Public Health
305 South Street
Jamaica Plain, MA 02130

IDENTITY/COVERAGE

This was a limited investigation of nursing mothers and break time under the FLSA.

Subject firm is a Massachusetts state agency engaged in the operation of public health education, research & laboratory testing. The federal EIN number is: 04-6002284. Coverage is asserted under 3(s) (1) (c) of the Act. The (b) (6), (b) (7)(C)

The enterprise has a total of 385 employees at the Jamaica Plain location (See Exhibit C-1).

Period of investigation was 3/23/2010 to 2/2/2012. This period was established because the Patient Protection and Affordable Care Act (PPACA) took effect when the PPACA was signed into law on 3/23/2010.

PRIOR HISTORY

This is the 1st investigation of the firm.

MODO INFORMATION

The Boston District Office is the MODO.

EXEMPTIONS

Only employees who are not exempt from Section 7, which includes the FLSA's overtime pay requirements, are entitled to breaks to express milk. (b) (6), (b) (7)(C) are non-exempt chemists under

29 CFR 541. They work in a laboratory setting analyzing samples & submitting findings. (See Exhibits B-1 & B-2).

The employer is not exempt from the FLSA break time requirement per 29 U.S.C 207(r) (B) (3). The enterprise has a total of 385 employees at the Jamaica Plain location (See Exhibit C-1).

STATUS OF COMPLIANCE

This investigation was initiated by (b) (7)(E) (b) (6), (b) (7)(C) (b) (7)(E) the facilities provided to lactating mothers to express milk were insufficient with regards to proper access & cleanliness. (b) (7)(E) (b) (6), (b) (7)(C) also (b) (7)(E) the room designated for nursing mothers was a bathroom (b) (7)(E). Both employees are hourly paid chemists. (b) (7)(E)

Section 6 (MW) – No violations were disclosed. (b) (6), (b) (7)(C) made in excess of the federal minimum wage (See Exhibit A-0).

Section 7 (OT) – No violations were disclosed. (b) (6), (b) (7)(C) who work in excess of 40 hours per week receive time & one half their regular rate of pay.

Section 7 (Patient Protection & Affordable Care Act)-

The following violations were disclosed:

The room is not free from intrusion with respect to an employee who stores insulin in one of the refrigerators resulting in a violation of Section 4207(r)(1)(b)

Only one nursing mother can use the room at any given time limiting accessibility for other nursing mothers resulting in a violation of Section 4207(r)(1)(a)

The writer 1st visited the establishment on 1/10/12 & met with Director Ceci Dunn. Ms. Dunn indicated she did not have time to speak with the writer, where no appointment had been made prior. Ms. Dunn rescheduled the visit to 1/12/12. The writer met with Ms. Dunn & Grace Connolly & toured the facility.

Ms. Dunn stated that there were approximately (b) (4) staff in the building; 385 which were employed by MA Department of Public Health. Additionally, University of Massachusetts Medical School has about

(b) (4) employees located at the site.

Prior to using the room, located on the 1st floor, Room 111, the employee who needs to express milk has to obtain one of the three available keys kept outside an office on the 2nd floor. Ms. Connolly stated that the keys are not currently kept locked up but will be in the future & a code will be needed to access the box containing the keys. Ms. Dunn stated that it was not a bathroom & that the toilet & sink area are only used by lactating mothers. The lactating room is actually 2 rooms. Each room is approximately 10 feet by 8 feet.

The 1st room, which requires a key for entry is a bathroom with an enclosed stall containing 1 toilet. Directly ahead are 2 sinks with paper towels & soap next to them & a small dormitory-sized refrigerator to store the expressed milk (See Exhibits D-3 & D-4). Nothing else is stored in the refrigerator except expressed milk. There are no chairs in the 1st room & no space available to express milk.

To the left is a 2nd door leading to the 2nd room, which is not used as a bathroom, only as a room to express milk. This door is left open when the 2nd room is not in use. There is a sign on the door indicating 'Room is In Use: Please come back at ____,' (See Exhibit D-2 & D-5) & a scratch board where someone could write in the time they will be finished using the room. The door to the 2nd room can be locked from the inside only with a deadbolt (See Exhibit D-6). In one corner is an unenclosed shower (See Exhibit D-7). Adjacent to the shower is a wall of lockers which the writer inspected & found empty except for a breast pump kept in one locker (See Exhibits D-8 & D-9). On the wall adjacent to the lockers was a wall-length counter with 2 chairs in front of it & a dormitory-size refrigerator under the counter (See Exhibits D-10 & D-11). Ms. Dunn stated that this refrigerator was also used to store expressed milk only. Above the counter, are three sets of electrical outlets used to operate the breast pumps. The writer noted that the room was clean, including the floors & there were no janitorial supplies stored in either room.

The writer asked Ms. Dunn what would happen if a lactating mother entered Room 111 to express milk & the room was in use. Ms. Dunn stated that if someone were using the room, the deadbolt would be on & the scratch board would indicate a time to return when the room would be available. Only 1 mother can express milk at any given time using the lactating room if they want total privacy. Ms. Dunn said they currently have 3 nursing mothers who use the room plus 4 employees who are 'very' pregnant' and may need the room in the near future. With reference to the 3 current lactating mothers, one works on the 5th floor and the other two work on the 3rd floor.

Two potential issues noted include:

- 1) Only 1 person can use the lactating room at a time. Because they have 3 current users & 4 potential users, conflicts will arise when more than 1 mother needs the room at the same time. The complainant indicated that it usually takes 20-25 minutes to express milk, store it, clean the breast pump & put it away. Delays to the nursing mother in accessing the room could have negative consequences with decreased milk production & discomfort, not to mention the time spent traveling from their work location to the 2nd floor to obtain the key to the 1st floor to see if the room is in use & then returning to their work location. The traveling would then be repeated at a later time & the room (again) could be in use & they would need to come back later.
- 2) Another (unidentified) employee is storing insulin in one of the refrigerators (according to [REDACTED]). The writer did not see the insulin stored there but it contradicts the information provided by Ms. Dunn when she stated that no-one uses the lactating room except nursing mothers & the janitor who uses it to clean only.

Section 4207(r)(1)(a) of the regulations states that the "Employer shall provide a reasonable break time for an employee to express breast milk for her nursing child for 1 year after the child's birth **each** time such employee **has need** to express the milk." The regulations do not yet impose time restrictions on Employers concerning how quickly a nursing mother can gain access to the lactating room or what is considered a reasonable time to wait to use the lactating room. The firm allows the nursing mothers to use their paid breaks to express milk and does not impose time restrictions on them.

Section 11 (RK) – No violations disclosed.

Section 12 (CL) – No violations disclosed.

DISPOSITION

A final conference was held on 2/2/2010 with Director of Operations for the Bureau of Infectious Diseases Ceci Dunn & Director of Administration & Finance for the Bureau of Laboratory Science Grace Connolly. The writer reviewed the requirements of the FLSA as it pertains to nursing mothers & provided Fact Sheet # 73 (Break Time for Nursing Mothers under the FLSA), Frequently Asked Questions- Break Time for Nursing Mothers & Section 7(r) of the FLSA- Break Time for Nursing Mothers Provision.

The writer explained to Ms. Dunn & Ms. Connolly that the following non-compliance issues existed:

The room is not free from intrusion with respect to an employee who stores insulin in one of the refrigerators.

Only one nursing mother can use the room at any given time limiting accessibility for other nursing mothers.

1) With respect to the 1st issue, Ms. Connolly stated that the employee who stored insulin in the refrigerator was requested to use other facilities in the building & was told to no longer use the refrigerator(s) in the lactation room.

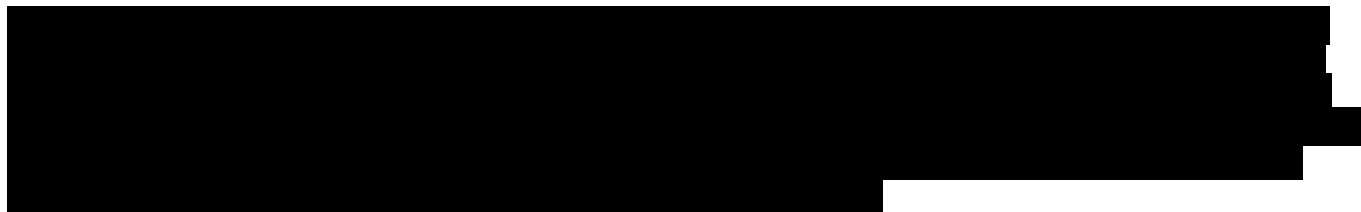


2) With respect to the 2nd issue, (accessibility of the lactation room) Ms. Connolly & Ms. Dunn both raised issues with respect to privacy of the nursing mothers & indicated that, even if curtains or another type of barrier were installed, as the writer suggested, allowing multiple nursing mothers to use the room at the same time, would violate their privacy and result in unnecessary distractions which could inhibit the ability to express milk. Ms. Dunn stated that due to the size of the current lactation room, only 2 nursing mothers could use the room at the same time if a barrier were installed.

Ms. Dunn suggested having a pre-determined schedule for the nursing mothers whereby a nursing mother would be scheduled to use the room each day at specific start & end times. Ms. Dunn stated that this would prevent the problem of a nursing mother finding the room in use & having to return to the lactation room one or more times until it became available. The writer indicated there could be problems with a predetermined schedule if a nursing mother was called upon to go to another work site on short notice & had to change her scheduled time. Ms. Connolly responded that the nursing mothers (almost) always receive prior notice, usually 24 hours, when they are called upon to go to another work site or appear in court; it never happens on short notice. The writer also discussed the potential problem of nursing mothers having to wait for their 'scheduled' time. During the interview process, the nursing mothers informed the writer that they typically need to express milk at mid-morning & again at mid-afternoon. If the schedule were put into place, this would be a relatively narrow window to accommodate 3-4 nursing mothers who each need 20-25 minutes to express milk. For example, if mother #1 is scheduled from 9:45 am to 10:10 am, mother #2 from 10:10 a.m. to 10:35 a.m., mother #3 from 10:35 am to 11:00 a.m., mother #4 would be scheduled to use the room from 11:00 a.m. to 11:25 a.m. which is close to the middle of the workday. Ms. Dunn & Ms. Connolly stated that the facility is a 24 hour operation & that many employees work flexible schedules with varying start times & end times & they do not believe these problems will occur. Ms. Dunn informed the writer that she knows from personal experience that it does not take 25 minutes to express milk, more commonly it takes 15 minutes, 20 minutes at the most, so wait times for the lactation room would be minimal or non-existent provided the nursing mothers adhered to their scheduled times or if an emergency arose, the nursing mother could contact another nursing mother & swap times if necessary.

The writer inquired about the possibility of moving the current lactation room to a larger room in another area of the building to better accommodate the needs of the nursing mothers. Ms. Connolly stated this was not possible due to a lack of available space plus the fact that many floors contained laboratories with chemicals or other hazardous materials which should not be exposed to nursing mothers.

Recommendation:

(b) (7)(E)



The writer informed Ms. Dunn and Ms. Connolly of the following:

- 1) Violations were disclosed resulting from the unavailability of the lactation room for nursing mothers who could not express breast milk “each” time they “had need” due to the limitations of the lactating room (1 person at a time). The firm was informed what corrective action could be

taken to prevent future problems.

- 2) There are currently no issues because only 2 nursing mothers presently use the lactation room and conflicts with accessibility to the lactation room have ceased.
- 3) A predetermined schedule with assigned times to use the lactation room would not be in the best interests of the mothers at this time and would place unnecessary restrictions on the nursing mothers.
- 4) (b) (7)(E) [REDACTED]
- 5) (b) (7)(E) [REDACTED]

Respectfully Submitted,

(b) (6), (b) (7)(C)

Wage Hour Investigator
February 22, 2012

WHISARD Compliance Action Report

U.S. Department of Labor Wage and Hour Division

Case ID: 1647901 Originating District: Hartford CT District Office
Local Filing Number: 2012-197-00178 Investigating District: Hartford CT District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 03/01/2012
Assignment Date: 03/01/2012

Employer Information

Trade Name: Thomaston Savings Bank
Address: 203 Main Street

Terryville, CT06786

Legal Name: Thomaston Savings Bank
EIN:
County: Litchfield
NAICS Code: 52311
No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 02/28/2012 BNPI:
To: 03/05/2012 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: ☐ Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

WHISARD Compliance Action Report

Conclusions & Recommendations:

■ not allowed by subject firm to express milk in the afternoons and on Saturdays. Rebecca Kayfus, VP of HR, of subject firm agreed to future compliance. Subject firm will allow ■ to express milk as needed; in the afternoon and on Saturdays. Case concluded.

WHI Signature: _____ Date: 03/08/2012

Reviewed By: _____ Date: _____

Memorandum for Record

Subject: FLSA Section 7 (r) Break Time for Nursing Mothers (b) (7)(E)

Date: March 5, 2012

Subject Firm: Thomaston Savings Bank (Case #1647901) 203 Main Street Terryville, CT 06786

Employer Coverage: Section 3(S)(1)(a) of the Fair Labor Standards Act. The subject firm is a private financial institution. The firm has approximately 10 locations and has approximately (b) (4) employees. According to VP of HR, Rebecca Kayfus the subject firm gross sales is (b) (4)

Employee Coverage: (b) (6), (b) (7)(C) is a bank teller and is non-exempt from FLSA Section 7 overtime provisions.

(b) (6), (b) (7)(C)

(b) (7)(E) (b) (6), (b) (7)(C) (b) (7)(E) the subject firm failed to provide reasonable break time to express milk in the afternoons and was requiring (b) (6), (b) (7)(C) to get a doctor's note. According to (b) (6), (b) (7)(C) the subject firm told (b) (6), (b) (7)(C) that since other employees were not given breaks in the afternoon, (b) (6), (b) (7)(C) was not allowed a break in the afternoon. Additionally, the subject firm was claiming undue hardship on the Saturday's that (b) (6), (b) (7)(C) worked. (b) (6), (b) (7)(C) is a bank teller and (b) (6), (b) (7)(C) manager is (b) (6), (b) (7)(C) stated that the VP of Human Resources, Rebecca Kayfus, was the individual that told (b) (6), (b) (7)(C) couldn't take the break in the afternoon and was requiring the doctor's note.

WHI (b) (6), (b) (7)(C) (the "writer") was assigned to the investigation on March 1, 2012. The writer telephoned (b) (6), (b) (7)(C) on March 5, 2012 and left a message on (b) (6), (b) (7)(C) voicemail. (b) (6), (b) (7)(C) called back on March 5, 2012 and the writer inquired further. (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) is a bank teller and is paid as an hourly employee making (b) (6), (b) (7)(C) an hour. (b) (6), (b) (7)(C) (b) (7)(E)

(b) (7)(E) (b) (6), (b) (7)(C) stated that the subject firm is in fact providing an area that is shielded from view and free from any intrusion from co-workers and the public. The subject firm is allowing a 15 minute break in the morning and a meal period; both compensated. The subject firm is not allowing (b) (6), (b) (7)(C) a break for the afternoon to express milk. (b) (6), (b) (7)(C) stated that the subject firm is telling (b) (6), (b) (7)(C) that it is unreasonable for (b) (6), (b) (7)(C) to pump in the afternoon and that (b) (6), (b) (7)(C) is not able to pump on Saturdays because it is causing an undue hardship to the firm. The subject firm is also telling (b) (6), (b) (7)(C) has to pump every 4 hours opposed to every 3 hour schedule. (b) (6), (b) (7)(C) stated that there are over (b) (4) employees working for the enterprise. The writer informed (b) (6), (b) (7)(C) of the provisions of the act and advised (b) (6), (b) (7)(C) of the anti-retaliation provisions of the FLSA section 15(a) (3).

The writer contacted Rebecca Kayfus, VP of Human Resources, on March 5, 2012 to discuss (b) (6), (b) (7)(C) situation. Mrs. Kayfus stated that she was aware of (b) (6), (b) (7)(C) issue. Mrs. Kayfus expressed that she requested the doctor's note because she thought it was a requirement under the Family Medical Leave Act. The writer informed Mrs. Kayfus that Section 7(r) Break Time for Nursing Mothers is a provision of the Fair Labor Standards Act, not the FMLA, and a doctor's note is not required. Additionally Mrs. Kayfus expressed that employees are not given breaks in the afternoon unless they work a "long" day schedule. If employees work a Thursday or Friday in which the bank opens until 6:00pm, they get an additional break of 15 minutes for the afternoon. Normally employees would get one 15 minute break in the morning and their meal period. The writer explained the requirements under the FLSA Section 7 (r) Break Time for Nursing Mothers to Mrs. Kayfus. The writer asserted that employers are required to provide reasonable break time for an employee to express milk for (b) (6), (b) (7)(C) nursing child for 1 year after the child's birth each time such employee has need to express milk. Mrs. Kayfus confirmed that (b) (6), (b) (7)(C) is given a space to express milk that is free from intrusion and is private. Generally (b) (6), (b) (7)(C) utilizes an office that is free or the safe depository room. Mrs. Kayfus was informed that the breaks need not be compensated under the act, however where employers already provide compensated breaks, an employ who uses that time to express milk must be compensated in the same way that other employees are. Mrs. Kayfus stated that the subject firm employees (b) (4) individuals.

Mrs. Kayfus gave the writer verbal agreement to future compliance. Mrs. Kayfus agreed to allow (b) (6), (b) (7)(C) to express milk each time (b) (6), (b) (7)(C) needs to, for up to one year after the child's birth. Mrs. Kayfus also gave verbal agreement to give (b) (6), (b) (7)(C) normal compensated breaks to express milk and will allow break time in the afternoon that is not compensated. Mrs. Kayfus stated that currently (b) (6), (b) (7)(C)

clocks out for (b) (6), (b) (7)(C) afternoon and if (b) (6), (b) (7)(C) works the late shift on Thursdays or Fridays (b) (6), (b) (7)(C) will be allowed a 15 minute break that is compensated. Additionally the writer explained that because the subject firm employees (b) (4) individuals, undue hardship could not be asserted. Mrs. Kayfus gave verbal agreement that (b) (6), (b) (7)(C) will be allowed to express milk as need be on Saturday's.

On March 5, 2012 the writer called (b) (6), (b) (7)(C) to inform (b) (6), (b) (7)(C) that Mrs. Kayfus gave verbal agreement to future compliance. The writer explained that (b) (6), (b) (7)(C) will be allowed to express milk in the afternoons and on Saturdays. Additionally explained that breaks do not have to be compensated but the employer agreed to not take away any breaks that (b) (6), (b) (7)(C) would normally get. The writer advised (b) (6), (b) (7)(C) to contact us should (b) (6), (b) (7)(C) have any other concerns in the future.

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1648269 Originating District: Richmond VA District Office
Local Filing Number: 2012-297-00177 Investigating District: Richmond VA District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 03/06/2012
Assignment Date: 03/13/2012

Employer Information

Trade Name: City of Virginia Beach/Windsor Woods Legal Name: City of Virginia Beach
Address: 3612 S. Plaza Trail EIN: 54-0722061
County: Virginia Beach
NAICS Code: 09650
No. Of Employees: 25
Virginia Beach, VA23452

Investigation Information

Period Investigated From: 07/05/2011 BNPI:
To: 04/19/2012 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

25 hrs: Sec 7 NM violation (b) (7)(E) ER's notificati reqs restrictive/ sotime consuming on (b) (6),(7) part found 2 B impediment to expressng breaks; ER failed to provide adequate space for (b) (7) due to conditions placed on (b) (7) in using the desig space. ER ATC by revising terms of breaks via written memo,removed/amend all restrictive language.FS 73 issued to ER electronicly

WHI Signature: _____ Date: 05/09/2012

Reviewed By: _____ Date: _____

City of Virginia Beach / Windsor Woods Library
3612 S Plaza Trail
Virginia Beach, VA 23452
(757) 385-2630
EIN: 54-0722061

FLSANM

I. Coverage:

Subject establishment is a public library funded/operated by the municipality of Virginia Beach. ER rep based out of Office of the City Attorney located at 2401 Courthouse Rd, Building 1 Room 240 Virginia Beach, VA (757) 385-1009

As a public agency, ER is subject to the provisions of the FLSA in accordance with Sec 3(s)(1)(c)

SIP covers from 5/11/2011 through 05/11/2012 under the Nursing mother provision in Section 7 of the Act.

Identifiable 3(d) ERs are (b) (6), direct supervisors, (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C); Library administrator, (b) (6), (b) (7)(C) as all parties have been recognized as possessing authority to make executive decisions w/ respect to day to day operations/policies which have direct impact on their EEs

II. Exemptions:

N/A. ER does not meet parameters for "Undue Hardship" exemption under NM provision.

III. Exemptions Denied:

ER did not claim any Sec 7 exemption w/ respect to (b) (6), status. EE is paid an hourly wage. Duties do not meet criteria for any exemptions under Section 7.

IV. Status of Compliance:

Section 6 – MW – No evidence that any EEs were paid < the applicable MW. [REDACTED] was paid an hourly wage of \$15.12.

Section 7 – NM - [REDACTED] (b) (7)(E) [REDACTED] ER has been disruptive/restrictive to [REDACTED] ability to express milk at work shortly after [REDACTED] return to the workplace. [REDACTED] claims that ER provided neither adequate time nor space to pump at work.

(b) (6), (b) (7)(C) [REDACTED] whom [REDACTED] was nursing. (b) (6), (b) (7)(C) [REDACTED] informed [REDACTED] direct supervisors that [REDACTED] is a nursing mother. At first, according to [REDACTED] ERs were neither accommodating nor uncooperative. In an informal way, ERs queried [REDACTED] as to [REDACTED] needs. [REDACTED] indicated that [REDACTED] would express during [REDACTED] allotted break times (15 minutes each paid). Although [REDACTED] was finding it difficult to express sufficiently in the allotted time, [REDACTED] managed as best [REDACTED] could.

[REDACTED] indicated that ERs had offered a supervisors' office at the outset of [REDACTED] return to work. This space is private and can be free from intrusion by coworkers/supervisors as it locks from inside & windows have blinds. However, because [REDACTED] was required to inform [REDACTED] supervisors of the need to take all “pumping” breaks in person, [REDACTED] often resorted to pumping in [REDACTED] private vehicle because supervisors were often occupied within the designated space as well as elsewhere in the building. [REDACTED] was not allowed to inform [REDACTED] supervisor(s) via e-mail or any other medium (e.g. by phone/text). [REDACTED] was instructed that when supervisors were occupied w/ customers/coworkers, [REDACTED] would have to wait until they were finished to inform them of the need to express. As such, [REDACTED] contends that even though ERs designated a space in accordance with the law, [REDACTED] didn't actually get to use the space and felt that this was a deliberate obstacle set by ER to discourage expressing @ work.

During initial conversations w/ [REDACTED] writer explored whether [REDACTED] was aware of any coworkers, past or present, who had expressed at work or had need to express at work. [REDACTED] responded that [REDACTED] knew of a couple of library workers who worked in another VB library in the last 2 year. [REDACTED] further asserted that informal one on one conversations w/ these unnamed nursing associates revealed similar frustrations with ER's lack of accommodations for expressing @ the workplace. However, [REDACTED] was reluctant to offer the names of those EEs, stating that those EEs would not appreciate involvement in this investigation.

[REDACTED] stated that the paid (15) minute breaks (which all EEs are entitled to) was not sufficient time to express adequate

amounts of milk for (b) (6) baby but had not relayed this (b) (6) ER until sometime in August, 2011 at which time (b) (6) supervisor(s) informed (b) (6) that (b) (6) was allowed to take more time but would consult w/ ER legal department. At this point, (b) (6) had already experienced diminished milk supply in at least 1 breast but thru conscientious efforts (at home) was able to restore the supply.

At the time that ER allowed (b) (6) to extend (b) (6) break time, (b) (6) was told that (b) (6) would need to make up any time (b) (6) took that went beyond the standard 15 minute break time. (b) (6) experienced some controversy with having to make up the time because (b) (6) wanted to split up the make up time between multiple days. ER was opposed to this, wanted (b) (6) to make up the break time (that exceeded the standard 15 min) taken that day in its entirety the same day. (b) (6) stated that (b) (6) eventually tried to minimize the amount of time (b) (6) took to express because of the requirement to make up all the time @ the end of (b) (6) shift. (b) (6) contends that having to make up all the time @ end of the same day as time taken interfered w/ (b) (6) afternoon nursing schedule. (b) (6) had expressed (b) (6) "feeling" this was another tactic on ER's part to discourage (b) (6) use of time to express @ work.

It had been explained to (b) (6) that ER reserved the right to require (b) (6) to make up time at their discretion as long as (b) (6) requirement is not retaliatory nor discriminatory. (b) (6) expressed that (b) (6) couldn't understand how making up the time in smaller increments spread over > 1 day was unreasonable or disruptive to (b) (6) ER's operations but ultimately accepted that ER did not have to allow (b) (6) to do so. (b) (6) relayed that (b) (6) had also consulted an attorney at around this time regarding the make up time issue and that attorney had relayed the same position w/ respect to make up time.

Starting in January, 2012, (b) (6) states that ER started making attempts to get (b) (6) to specify the frequency, time of day (during a work shift) & duration of the breaks (b) (6) would need to express & commit to those specifications verbally. (b) (6) stated that (b) (6) tried to convey to supervisors that although (b) (6) can indicate times of day and frequency but that they would only be estimates as the needs are not always consistent/predictable. (b) (6) told writer that (b) (6) experienced incidences where there were "emergencies" and had to express more than 2 times in an 8 hr shift. Because ER committed (b) (6) to a certain # of breaks @ certain times of the day, (b) (6) felt compelled to express secretly.

After (b) (6) verbalized (b) (6) need to have ER exercise more flexibility as it relates to (b) (6) nursing needs, ER consulted w/ ER attorney's office. Virtually concurrent w/ the start of this C/A but before writer had any contact w/ ER, ER drew up an agreement for (b) (6) to sign. This agreement (See Exhibit D-9) committed (b) (6) in writing to take (b) (6) expressing breaks to particular ½ hr time slots and continued to require (b) (6) to notify shift supervisor(s) in person when (b) (6) was initiating (b) (6) break as well as at the end of (b) (6) break time. (b) (6) continued to be burdened with having to locate the supervisors, estimating that it sometimes takes 3-5 minutes @ each end of the break to do so. (b) (6) also instructed thru this agreement that if supervisor(s) are otherwise occupied, (b) (6) is to wait until such time that they are available to be notified by (b) (6) of (b) (6) need for a break (See Exhibit D-9 backside highlighted). Finally, this written

agreement stipulated @ its end that (b)(7)(F) could face disciplinary action if (b)(7)(F) deviated from the conditions spelled out therein.

(b)(7)(F) was also told that (b)(7)(F) could no longer make up any break time (that goes above & beyond the standard 15 minutes afforded all EEs) (b)(7)(F) takes to pump breast milk. That is, ER stipulated that ½ hr per shift will be paid break time on full days since all EEs are entitled to (2) 15min breaks for a full day, (1) 15 minute break for 4 hr shifts. On days where (b)(7)(F) works 4 hr shift, (b)(7)(F) will only be paid for 15 minutes of ½ hr (or more) for expressing breast milk.

(b)(7)(F) expressed (b)(7)(F) discontent w/ this directive. (b)(7)(F) contends that (b)(7)(F) never expressed to ERs any desire to avoid making up the time. Again, (b)(7)(F) feels that this is another means of systematically dejecting (b)(7)(F) ability to continue expressing @ work. (b)(7)(F) also indicated that when (b)(7)(F) is late for work, (b)(7)(F) is occasionally instructed to make up the time on another day, even days off. This further baffles (b)(7)(F) as to why ER would not allow the same approach to make up time when (b)(7)(F) takes > 15 min per break to express. Although reluctant to sign this agreement, (b)(7)(F) did. Before doing so, (b)(7)(F) did inquire w/ writer as to the whether (b)(7)(F) had to comply w/ ER's instruction to sign the agreement. Writer was in no position @ that point to direct (b)(7)(F) not to since the investigation had just commenced & ER appeared to present the agreement as a condition of employment.

(b)(7)(F) understood at the outset that (b)(7)(F) protections under the NM proviso will expire on May 11th, 2012. (b)(7)(F) stated that (b)(7)(F) motivation for pursuing this (b)(7)(E) has nothing to do with seeking monetary restitution but everything to do w/ relief from the restrictive measures ER has put in place. (b)(7)(F) also relayed that (b)(7)(F) ability to provide sufficient breast milk for (b)(7)(F) baby has been hindered significantly since at least December, 2011. In effect, (b)(7)(F) feels that ER “robbed” (b)(7)(F) of months of providing something (b)(7)(F) feels strongly is vital to properly nourish (b)(7)(F) infant child. When asked to estimate the amount of time (b)(7)(F) lost due to having to seek out mgrs physically, cutting into (b)(7)(F) break time to express, (b)(7)(F) was inconclusive.

Contact w/ ER initiated on 4/3/12. Writer was eventually referred to City of VB HR Attorney's office, specifically City's HR/Labor attorney Marjorie Smith. Initial discussion w/ Smith (4/4/12) (b)(7)(E) (b)(7)(F) Writer requested all records pertinent to (b)(7)(F) break times as well as for Smith to confer with site supervisors as to their account of events leading up to the written agreement.

On or around 4/9/12, writer rcvd ER written response (b)(7)(E) including copies of e-mails between (b)(7)(F), (b)(7)(C) mgrs as well as copy of agreement that (b)(7)(F) had signed on 3/22/12. August e-mails between (b)(7)(F), (b)(7)(C) (1 of (b)(7)(F) direct supervisors) & (b)(7)(F) appear to demonstrate that (b)(7)(F) was cognizant of and accommodating to (b)(7)(F) needs. In 1 such e-mail, (b)(7)(F) inquired w/ (b)(7)(F) how many breaks (b)(7)(F) needed for scheduling purposes & even ended the message by relaying to (b)(7)(F) that (b)(7)(F) didn't wish for (b)(7)(F) to “worry about feeling rushed” (See Exhibit D-2). This message was followed by (b)(7)(F) instructions on when/how (b)(7)(F) can make up time (b)(7)(F) takes that goes over the standard 15

minutes. (b) (6), (b) (7)(F) stated in this e-mail that (b) (6) had the latitude to make up the time in a variety of ways including making up the time by coming in early the next work day.

ER response also relayed an incident where (b) (6) was pumping @ (b) (6), (b) (7)(F) workstation which is a cubicle setting, where coworkers (both male & female as well as teen volunteers) regularly pass by and in view of cubicle occupant. According to ER attorney, (b) (6) was informed that (b) (6), (b) (7)(F) was not allowed to pump @ (b) (6), (b) (7)(F) desk for various reasons including the contention that some coworkers were uncomfortable w/ it. (b) (6) was reminded at that time that supervisors' offices are available to (b) (6), (b) (7)(F) to maintain privacy when she pumps. ER stated that (b) (6) was displeased that ER barred (b) (6), (b) (7)(F) from pumping @ (b) (6), (b) (7)(F) work desk.

ER records also showed that ER learned that (b) (6) was smoking cigarettes as well as pumping on (b) (6), (b) (7)(F) breaks. They 1st learned this after a supervisor smelled smoke on (b) (6), (b) (7)(F) when (b) (6), (b) (7)(F) entered the supervisors' office to express milk. ER issued a request (via e-mail) to (b) (6), (b) (7)(F) for (b) (6), (b) (7)(F) smoke after (b) (6), (b) (7)(F) pumps as 1 of the supervisors is highly sensitive to the smell of cigarettes. ER purports that (b) (6), (b) (7)(F) had not denied that (b) (6), (b) (7)(F) was using portions of (b) (6), (b) (7)(F) breaks to smoke nor had (b) (6), (b) (7)(F) been secretive about smoking. Mgrs had not sought out the fact that (b) (6), (b) (7)(F) smoked but that (b) (6), (b) (7)(F) was blatant about smoking. Furthermore, ER contends that (b) (6), (b) (7)(F) had elected to express in (b) (6), (b) (7)(F) car, they presume that doing so (b) (6), (b) (7)(F) eases (b) (6), (b) (7)(F) need to smoke & express milk in whichever order (b) (6), (b) (7)(F) desires. ER provided e-mail from (b) (6), (b) (7)(F) dated 3/12/12 (See Exhibit D-7).

ER provided records/copies of e-mails, etc prefaced by written account of events surmised from (b) (6), (b) (7)(F) on site mgrs (See Exhibit D-1 front & back sides).

Writer addressed the issues/defenses raised by ER attorney w/ (b) (6), (b) (7)(F) on/around 4/13/12. (b) (6), (b) (7)(F) was asked about the pumping @ (b) (6), (b) (7)(F) desk allegation which (b) (6), (b) (7)(F) verified had occurred once. (b) (6), (b) (7)(F) offered that the space was in the back of the bldg & not within view of the public. (b) (6), (b) (7)(F) assured writer that (b) (6), (b) (7)(F) was covered up while expressing & had not heard from co-workers any concerns on their part. (b) (6), (b) (7)(F) also verified that ER had almost immediately informed (b) (6), (b) (7)(F) that (b) (6), (b) (7)(F) could not express @ (b) (6), (b) (7)(F) desk. (b) (6), (b) (7)(F) relayed that (b) (6), (b) (7)(F) had all along been under the impression that the NM provision afforded (b) (6), (b) (7)(F) the option as to whether or not to use the facility provided by ER since the provision states that an ER has to provide a space ... that an EE "may" use to express. Writer explained to (b) (6), (b) (7)(F) that the provision requires an ER to provide the space & reserves the right to require NMs to use that designated space. Writer further explained that the word may is used not to suggest that EEs have an option not to use the space but that the space satiates the requirements set forth in the provision in order for the NMs to exercise the ability to express @ work, free from intrusion, etc.

Writer further explained to (b) (6), (b) (7)(F) that (b) (6), (b) (7)(F) position that (b) (6), (b) (7)(F) should be able to express @ (b) (6), (b) (7)(F) desk as opposed to the private office designated for (b) (6), (b) (7)(F) diminishes the argument that ER was unaccommodating to (b) (6), (b) (7)(F) needs or that ER did

not take their requirements under the NM provision seriously. That is, if (b)(6) makes the argument that (b)(6),(b)(7)(C) should be able to express @ (b)(6),(b)(7)(C) work space which does not provide any privacy from others, then how can DOL take the stance that (b)(6),(b)(7)(C) ability to take time to express in a place where (b)(6),(b)(7)(C) privacy would be secured was inhibited by ER. (b)(6),(b)(7)(C) eventually acquiesced that (b)(6),(b)(7)(C) misconstrued parts of the NM provision but was adamant that after ER directed not to express @ (b)(6),(b)(7)(C) desk, (b)(6),(b)(7)(C) never did it again.

During this conversation w/ (b)(6),(b)(7)(C) did say something that confirms writer's inclinations. (b)(6),(b)(7)(C) mentioned that (b)(6),(b)(7)(C) thought the ideal situation would have been if (b)(6),(b)(7)(C) was allowed to express at (b)(6),(b)(7)(C) desk because (b)(6),(b)(7)(C) then wouldn't have to worry about making up paid time & (b)(6),(b)(7)(C) 15 minute breaks could be used to do things other than express milk. (b)(6),(b)(7)(C) stated that (b)(6),(b)(7)(C) was able to work while expressing/pumping which would alleviate (b)(6),(b)(7)(C) concern about falling behind in work although no one including (b)(6),(b)(7)(C) mgrs raised such concerns.

Writer then addressed ER's claims regarding portion of the break times being used to smoke. (b)(6),(b)(7)(C) expressed (b)(6),(b)(7)(C) embarrassment that (b)(6),(b)(7)(C) had not mentioned that (b)(6),(b)(7)(C) smokes while (b)(6),(b)(7)(C) is nursing in the hopes that this detail would not be relevant. Writer replied that the relevancy has only to do with whether the break times were extended to accommodate (b)(6),(b)(7)(C) smoking as well as expressing & nothing to do w/ any moral judgments. (b)(6),(b)(7)(C) began crying at this point, claimed that it seemed that it was at the point when mgrs discovered that (b)(6),(b)(7)(C) was smoking that they "turned" on (b)(6),(b)(7)(C). Writer asked that if (b)(6),(b)(7)(C) felt that way, it would have been important to know this before writer's discussions w/ ER attorney. (b)(6),(b)(7)(C) concurred that (b)(6),(b)(7)(C) should have been more upfront w/ writer about the smoking issue but was worried that (b)(6),(b)(7)(C) then wouldn't be taken as seriously or at all.

(b)(6),(b)(7)(C) confirmed that the incident that prompted mgrs to ask (b)(6),(b)(7)(C) to smoke after pumping in fact happen, that (b)(6),(b)(7)(C) had in fact smoked prior to using mgrs' office to pump. Through tears, (b)(6),(b)(7)(C) also stated that (b)(6),(b)(7)(C) felt that mgrs judged (b)(6),(b)(7)(C) negatively for smoking while nursing but that they never actually said anything to that effect, it was just a feeling.

ER does have a written policy satiating the notice requirements of Sec 7 NM subsection (See Exhibit D-20)

Section 11 – RK – N/A.

Section 12 –CL – No evidence to support that ER employed any minors at subject location.

V. Disposition:

After having considered all the circumstances & evidence presented, despite (b) (6), (b) (7)(C) misconceptions about (b) (6), (b) (7)(C) rights under the NM provision, writer determined that ER had restricted (b) (6), (b) (7)(C) ability to express @ work by placing an undue hardship on (b) (6), (b) (7)(C) to notify in person & in person only of need to take break & (b) (6), (b) (7)(C) return from breaks. The requirement to inform supervisors in person is not placed on other non NM EEs. Because the need to express is not always predicable, by requiring (b) (6), (b) (7)(C) to seek out (b) (6), (b) (7)(C) supervisor(s) physically, ER in essence delayed (b) (6), (b) (7)(C) needs to express as well took up part of (b) (6), (b) (7)(C) allotted break times unnecessarily. (b) (6), (b) (7)(C) made it obvious to ER that (b) (6), (b) (7)(C) was concerned about having to make up work time & having to locate (b) (6), (b) (7)(C) supervisors in person cut into (b) (6), (b) (7)(C) allotted time to express/pump. The written agreement that (b) (6), (b) (7)(C) felt obligated to sign further confines (b) (6), (b) (7)(C) to express only certain times of the day & leaves no room for the potential unexpected needs of this NM.

(b) (7)(E)

(b) (6), (b) (7)(C) that this office should not even intimate extension of NM accommodations to (b) (6), (b) (7)(C) beyond statutory 12 month period (from DOB) as 1 way of achieving relief to (b) (6), (b) (7)(C) making (b) (6), (b) (7)(C) “whole.” However, should ER offer addtl months' accommodations, they may do so directly w/ (b) (6), (b) (7)(C) but w/out any mention of such an offer being sanctioned/encouraged by WHD.

Discussion held w/ ER attorney, Smith, on 4/19/12. Writer relayed (b) (6), (b) (7)(C) determination that although ER appeared to make an effort to be accommodating @ the outset of (b) (6), (b) (7)(C) needs as a NM, ER's requirements w/ respect to (b) (6), (b) (7)(C) providing notice to supervisors was unduly restrictive & incongruent w/ the spirit of the NM provision under Sec 7 of the Act. ER rep was asked to lift the burden placed on (b) (6), (b) (7)(C) to inform (b) (6), (b) (7)(C) supervisor(s) in person w/ the explanation that the time (b) (6), (b) (7)(C) had to expend seeking out (b) (6), (b) (7)(C) supervisors when/if they are not readily available. This aspect of the notification requirements placed on (b) (6), (b) (7)(C) (even before it was reduced to writing in the “agreement”) is effectively non compliant as it delays (b) (6), (b) (7)(C) needs as a NM. It was explained to Smith that the NM proviso states that ER is obliged to provide reasonable amount of time “each time such EE has need to express milk.” By requiring (b) (6), (b) (7)(C) to wait until such time that supervisor(s) are no longer busy w/ some other task is 1.) so ambiguous that it leaves the (b) (6), (b) (7)(C) apprehensive about facing reprimand for ever interrupting supervisor(s) and 2.) naturally puts off (b) (6), (b) (7)(C) need to express. This notification requirement has also had the effect of (b) (6), (b) (7)(C) rushing to express in < 30 minutes as (b) (6), (b) (7)(C) is ever cognizant that (b) (6), (b) (7)(C) has to use some of (b) (6), (b) (7)(C) allocated ½ hr break to notify (b) (6), (b) (7)(C) supervisor(s) @ the beginning & end of (b) (6), (b) (7)(C) breaks.

Smith agreed that some of the language in the agreement may be interpreted as restrictive/unsympathetic to the

subject NM. She reiterated that ER's efforts to pinpoint needed break times, however, was never to confine (b)(6) to only those specific times of the day. The primary purpose was in order for site mgrs to schedule desk coverage & to make arrangements to be vacant from their office when (b)(6) needed to express. Smith stated that ER is completely amenable to inserting the caveat that (b)(6) break times are subject to change depending on (b)(6) nursing needs. Smith also agreed that to be more "reasonable & flexible" with (b)(6) ER is willing to permit (b)(6) to notify mgrs of (b)(6) need to take & (b)(6) return from leave via e-mail to alleviate (b)(6) from having to take any time from (b)(6) ½ hr long breaks to seek them out if they're not in their office. Smith also agreed to remove the language about (b)(6) facing disciplinary consequences for deviating from any part of the guidelines set forth in the agreement/memo.

Revised memo/agreement rcvd from Smith on 5/6/12. Review of said memo (Exhibit D-18, D-19) showed intent on ER's part to accommodate (b)(6) nursing needs in full compliance with Sec 7 NM provisions. The memo allows for (b)(6) to notify supervisor(s) via e-mail thereby removing the burden of physically seeking out supervisors, denotes specific times of scheduled work days where supervisors are expected to vacate their offices in order for (b)(6) to utilize the designated private space and stipulates the common understanding that some divergence from scheduled break times may be necessary & that (b)(6) will not suffer any disciplinary repercussions for such divergences.

FS# 73 sent to ER rep, Smith, as reference material.

General terms/details relayed to (b)(6) via tel on 5/7/12. (b)(6) expressed satisfaction w/ amendments to the terms of (b)(6) nursing breaks & thanked writer/DOL for efforts on (b)(6) behalf.

Recommendations:

Admin closure / (b)(6)

(b)(6), (b)(7)(C), Investigator

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1651493 Originating District: Manchester NH District Office
Local Filing Number: 2012-245-00188 Investigating District: Manchester NH District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 04/02/2012
Assignment Date: 04/02/2012

Employer Information

Trade Name: Grafton County Nursing Home Legal Name: Grafton County Nursing Home
Address: 3855 Dartmouth College Highway EIN: (b) (7)(E)
County: Grafton
NAICS Code: 09170
No. Of Employees: (b) (7)(E)
North Haverhill, NH03774

Investigation Information

Period Investigated From: 09/04/2011 BNPI:
To: 04/04/2012 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: (b) (7)(E) Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	
Total Violations Under FLSNM :	2						\$0.00

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

WHISARD Compliance Action Report

Conclusions & Recommendations:

1.50 hr. (b) (7)(E) FLSA/Nursing Mothers. ER is covered county nursing home. (b) (7)(E) is LNA. Upon return from maternity leave (b) (7)(E) was not given reasonable break time and private area to express breast milk. ER agreed to remedy immediately. FC with Mike Simpson - HR Director. (b) (7)(E) manager spoke w/ (b) (7)(E) on 4/4/12 and assured accommodation and coverage for breaks and usage of private room. Unable to make contact with (b) (7)(E) Left msg for (b) (7)(E) and advised of remedy. HRG mailed to ER on 4/5/12. Rec admin close with no further action

WHI Signature: _____ Date: 04/05/2012

Reviewed By: _____ Date: _____

WHISARD Compliance Action Report

U.S. Department of Labor Wage and Hour Division

Case ID: 1660864 Originating District: Raleigh NC District Office
Local Filing Number: 2012-291-00899 Investigating District: Raleigh NC District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 06/27/2012
Assignment Date: 06/27/2012

Employer Information

Trade Name: City of Winston Salem Legal Name: City of Winston-Salem
Address: 1550 B Martin Luther King Jr Drive EIN: 56-6000241
PO Box 2511 County: Forsyth
Winston Salem, NC 27102 NAICS Code: 22131
No. Of Employees: 66

Investigation Information

Period Investigated From: 04/08/2012 BNPI:
To: 09/02/2012 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	
Total Violations Under FLSNM :	2						\$0.00

FMLA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FMLA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

Hrs=23. Ent cov. as city govt. (b) (6), (b) (7)(C) stated employer told (b) (6), (b) (7)(C) there was no place for (b) (6), (b) (7)(C) to express (b) (6), (b) (7)(C) breast milk when returned from maternity/FMLA leave and (b) (6), (b) (7)(C) could express milk in employer truck as (b) (6), (b) (7)(C) traveled around on job. Contacted employer/city govt. and City agreed to provide private place for (b) (6), (b) (7)(C) to express breast milk & adequate breaks for that purpose. HRG mailed to HR & given to (b) (6), (b) (7)(C) dept.head, (Utility Dept.). (b) (6), (b) (7)(C) informed of outcome of inv.9-6-12. ER ATC. Pubs: HRG, FS #73.

WHI Signature: _____ Date: 09/10/2012

Reviewed By: _____ Date: _____

City of Winston-Salem
1550 B MLK Jr. Drive
Winston-Salem, NC 27107
Tel. (336) 747-6809
Federal Tax ID# 56-6000241

File #: 2012-291-00899

Case #: 1660864

FLSA NARRATIVE


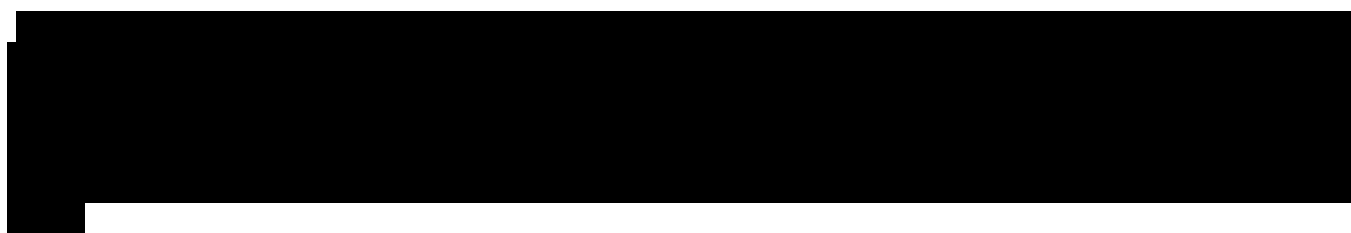

CASE ASSIGNMENT INFORMATION: This case was assigned (b) (7)(E) (b) (6), (b) (7)(C) indicated that (b) (6), (b) (7)(C) having worked as a meter reader for the City of Winston-Salem in utility construction and maintenance from November 2009 until April 2, 2012 when (b) (6), (b) (7)(C) left work to have (b) (6), (b) (7)(C) baby (b) (6), (b) (7)(C) doctor indicated (b) (6), (b) (7)(C) needed a light duty job during the final stages of (b) (6), (b) (7)(C) pregnancy, (b) (6), (b) (7)(C) employer found an office job for (b) (6), (b) (7)(C) to do until (b) (6), (b) (7)(C) left to have (b) (6), (b) (7)(C) child (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) further (b) (7)(E) when (b) (6), (b) (7)(C) doctor released (b) (6), (b) (7)(C) to return to work on light duty before (b) (6), (b) (7)(C) maternity/FMLA leave was up (b) (6), (b) (7)(C) employer wouldn't allow (b) (6), (b) (7)(C) to return to work on light duty and indicated there was no place to put (b) (6), (b) (7)(C) where (b) (6), (b) (7)(C) could pump (b) (6), (b) (7)(C) milk in private. (b) (6), (b) (7)(C) indicated that sometimes (b) (6), (b) (7)(C) had to look for the water cutoffs which might be located in fields or woods adjacent to homes, or other unsanitary places, and then actually go to those cutoffs. (b) (6), (b) (7)(C) further indicated that as (b) (6), (b) (7)(C) job required (b) (6), (b) (7)(C) to cut off citizens' water for non-payment of services, (b) (6), (b) (7)(C) had to work with stagnant water which snakes and cockroaches might have traversed and (b) (6), (b) (7)(C) doctor told (b) (6), (b) (7)(C) could not pump (b) (6), (b) (7)(C) milk until (b) (6), (b) (7)(C) could wash up; otherwise, (b) (6), (b) (7)(C) might get diseases or contaminate (b) (6), (b) (7)(C) milk. As no office job was offered to (b) (6), (b) (7)(C) doctor would not release (b) (6), (b) (7)(C) to return to work to full duty as long as (b) (6), (b) (7)(C) had FMLA leave to take.

(b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) supervisor, (b) (6), (b) (7)(C), told (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) could pump (b) (6), (b) (7)(C) milk in the city truck in which (b) (6), (b) (7)(C) worked. (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) felt that (b) (6), (b) (7)(C) might subject (b) (6), (b) (7)(C) to violation of some law if someone from the public approached (b) (6), (b) (7)(C) in the city truck while (b) (6), (b) (7)(C) was pumping her milk. (b) (6), (b) (7)(C) also felt that (b) (6), (b) (7)(C) could not trust that (b) (6), (b) (7)(C) milk was fit to give (b) (6), (b) (7)(C) baby unless (b) (6), (b) (7)(C) was provided a place to wash up, which might not be possible if (b) (6), (b) (7)(C) had to pump the milk away from (b) (6), (b) (7)(C) unit building. (b) (6), (b) (7)(C) stated (b) (6), (b) (7)(C) was required to travel all around the area in a city truck and was required to cut the water off to as many as 110 households in any one day. (b) (6), (b) (7)(C) also stated that (b) (6), (b) (7)(C) was told by (b) (6), (b) (7)(C), Deputy Human Resource Director for the City of Winston-Salem, that the City was laying off employees and (b) (6), (b) (7)(C) might need to find another job, or make other arrangements, or change the way (b) (6), (b) (7)(C) fed (b) (6), (b) (7)(C) baby, such as put her baby on a formula.

MOD0: (b) (7)(E)

(b) (7)(E)




HISTORY: There have been two prior contacts with the City of Winston-Salem prior to this investigation.

(1) A prior (b) (7)(E) conducted by this WHI, (File # 374383), with an investigative period of 9/15/1997 to 10/15/1997 found \$100 due one employee that worked doing maintenance work during the Dixie Classic Fair in Winston-Salem for 19.4 hours without being paid the minimum wage of \$5.25 per hour. The City of Winston-Salem owns the Coliseum/ fair grounds where the Dixie Classic Fair is held every year in September and employs the workers that work during the fair. This employee's supervisor, Ms. Evette McMillian, agreed to pay this employee \$100. However, from the DOL database record (see D-6) it is not clear if this amount was every paid to the employee. It should be noted that there likely was no on-line data base at the time of this (b) (7)(E) and as information was later put into the database for previous years, the lack of a payment record might have been from the failure to input the information in the data base rather than non-payment of the \$100.

(2) A full investigation of the City of Winston-Salem Police Department was conducted by this WHI (see File #1071275, D-7), which had an investigative period from 5/27/2001 to 5/25/2003. This investigation focused on whether Police Sergeants were misclassified as exempt. Multiple in-depth 541 interviews were done. This investigation resulted in a second level conference being held at the Winston-Salem Federal Building in which DD John Blaine represented the WHD and the City of Winston-Salem was represented by their attorneys.

(b) (7)(E)



SCOPE OF THE INVESTIGATION: This was a limited investigation of the nursing mothers provision under the FLSA 207 (r) [concerning the law regarding break time for nursing mothers]. A cursory look at the other provisions of the FLSA [Minimum Wage, Overtime, Record Keeping or Child Labor regulations/ laws] found no obvious violations, and considering the fact the City of Winston-Salem has over (b) (4) employees, it was deemed an ineffective use of time to spend additional time interviewing city employees so this investigation was not expanded and only (b) (6), (b) (7)(C) (B-1), was interviewed. To conserve time on the profile work weeks (A-0), a sample was used. As (b) (6), (b) (7)(C) worked for the Construction and Maintenance Division of the City of Winston-Salem, that unit, comprised of approximately (b) (7) employees, was used as the sample for the profile work weeks and this sample helped determine that a wider investigation into the other four provisions of the FLSA [minimum wage, overtime, record keeping and child labor] was not necessary.

PERIOD OF INVESTIGATION: April 8, 2012 (the week ending date of the last week (b) (6), (b) (7)(C) worked before leaving for maternity leave) until the present, September 2, 2012.

COVERAGE

Nature of Business: The subject of this investigation is a city government that employs approximately (b) (4) full time employees some of which work to provide water, sewer service, parks and recreation facilities to citizens while others work in various departments [such as the fire department and policy department] to regulate various aspects of life in Winston-Salem and still others work in administrative jobs to support the work of their co-workers working in the field.

The town of Winston was established in 1851 and the towns of Winston and Salem combined in 1913 to form the City of Winston-Salem. It has approximately 40 departments (see C-2, E-2 through E-5). The city of Winston-Salem is run by an elected mayor, currently Mr. Allen Joines, and has an elected city council which is composed of ten members plus the mayor.

No Section 16(b) actions are pending (See Exhibit C-2).

Allen Joines - Mayor

Section 3(d) employer:

The Human Resource Department is the branch of the City of Winston-Salem that authorizes payment to city employees. It works directly with the city attorneys. Therefore, Ms. Judith Catron, Deputy Human Resource Director for the city of Winston-Salem, the contact person for the US DOL, is qualified to bind the city of Winston-Salem relating to matters of hiring, firing and pay and she qualifies as the 3(d) employer.

ENTERPRISE COVERAGE: (203)(s)(1)(C) enterprise coverage is applicable as this employer is a public agency, a local government. It has a budget for 2012 that exceeds \$392 million dollars and it has had an ADV of over \$300 million for the past two years. As items such as paper, motor vehicles, and office equipment now owned by the City of Winston-Salem, and used by its employees, were made in various other states and have moved in interstate commerce, enterprise coverage is applicable.

INDIVIDUAL COVERAGE: The office employees regularly use the Internet and go to sites outside the state of NC and therefore are individually covered. However, as public agency enterprise coverage is applicable, no detailed investigation was made to determine individual coverage for all city employees.

EXEMPTIONS:

13(a)(1) as delineated by the Regulation 541:

541.100

A 541.100 executive exemption was found applicable to the following employees working for the Utility Department's Construction and Maintenance Division, spending more than half their time supervising two or more full time employees, having the authority to hire and fire employees with supervision as their main responsibility:

- 1) Mr. Adam Conn, Division Director of the Utility Department's Construction and Maintenance Division, the unit for which (b) (6), (b) (7)(C) worked. He is salaried at (b) (6), (b) (7)(C) per week. His primary job is supervision of this division, comprised of over sixty employees (A-0-9).
- 2) (b) (6), (b) (7)(C) is a salaried supervisor spending most of (b) (6) time supervising in excess of two full-time employees. (b) (6) is salaried at (b) (6), (b) (7)(C) per week (A-0-9).
- 3) (b) (6), (b) (7)(C) is a salaried supervisor spending most of (b) (6) time supervising in excess of two full-time employees. (b) (6) is salaried at (b) (6), (b) (7)(C) per week (A-0-12).

STATUS OF COMPLIANCE

PAY PRACTICES:

Salaried employees:

Three employees of the Utility Department's Construction and Maintenance Division are exempt and they receive, in addition to their salary, comp time for extra hours worked. This comp time pay, only given to exempt employees, is termed "NWT Wages" as the regulations don't require them to be paid any additional pay for overtime hours worked. Exempt employees are all guaranteed their weekly salary. All salaried employees are considered exempt employees.

Hourly employees:

All other employees are paid hourly. They are paid bi-weekly, on Friday, as are the salaried employees. Their work week is Monday through Sunday, which is the same work week used for the salaried exempt employees. All hourly employees' work hours are tracked through computers, time sheets or time cards.

The least rate any employee is paid is \$7.25 per hour but only two of the City's (b) (4) employees are paid \$7.25. All others are paid in excess of \$7.25 per hour.

Hours Worked Issues:

Meal Deductions:

Thirty minutes is usually deducted for the meal period for hourly paid employees. Although (b) (6), (b) (7)(C) indicated (B-1) (b) (6), sometimes didn't have time to take (b) (6), lunch, (b) (6), worked alone and there is no way to independently verify if (b) (6), took (b) (6), lunch breaks, worked through (b) (6), lunch breaks or a combination of the two. Therefore, no violation was charged for working through (b) (6), lunch breaks due to lack of proof.

Child Labor:

No violation. No minors have worked for the City of Winston-Salem on a regular basis in the last two years. Some minors, 16 years of age and older, may have been hired as lifeguards at the city swimming pools during summers in the past, but none are working for the City of Winston-Salem currently and there is no indication that any minors worked in violation of the child labor regulations.

Section 206(a): MINIMUM WAGE: No violation charged. All city workers are paid at least minimum wage and only two currently make \$7.25 per hour with all others making in excess of \$7.25 per hour.

Section 207(a): OVERTIME: No violation charged. As can be seen from the profile work weeks (A-0), all non-exempt hourly employees are paid additional half-time to equal time and one-half when they work in excess of forty hours per week. In some cases, hourly employees were paid time and one-half when they are paid for hours over forty hours per week, even if some of the basis of the first forty hours is pay for hours not worked such as vacation or holiday pay [for example see (b) (6), (b) (7)(C)., A-0-5, A-0-14].

Section 207(r): NURSING MOTHERS: A violation is charged but no monetary violation was found due. As this employer has over (b) (4) employees, well over the 50 required by this statute, Section 207(r) is applicable to the City of Winston-Salem. The employer representative, Ms. Judith Catron, did not allow (b) (6), (b) (7)(C) to return from FMLA leave early by giving (b) (6), (b) (7)(C) a light duty job as ordered by (b) (6), (b) (7)(C) doctor. However, Ms. Catron was under no statutory requirement of the FLSA to put (b) (6), (b) (7)(C) on a light duty job. (b) (6), (b) (7)(C) (b) (7)(E) Ms. Judith Catron told (b) (6), (b) (7)(C) could pump (b) (6), (b) (7)(C) breast milk in (b) (6), (b) (7)(C) city work truck and did not tell (b) (6), (b) (7)(C) that a private room would be provided for (b) (6), (b) (7)(C) to express (b) (6), (b) (7)(C) breast milk. However, Ms. Catron did not appear to know about the nursing mother provision of the FLSA until contacted by this WHI which resulted in her consulting the city attorney and then assuring the US DOL, WHD, that the City of Winston-Salem would comply with the requirement to provide a private room for nursing mothers to express their breast milk up until the child turned one year old and also to provide adequate breaks for that purpose

As (b) (6), (b) (7)(C) has finally indicated that (b) (6), (b) (7)(C) was unable to return to work for the City of Winston-Salem anytime after the birth of (b) (6), (b) (7)(C) child up to the present time [as (b) (6), (b) (7)(C) hurt (b) (6), (b) (7)(C) foot prior to the birth of (b) (6), (b) (7)(C) child, and (b) (6), (b) (7)(C) foot now requires surgery and additional time off from work], (b) (6), (b) (7)(C) is aware that (b) (6), (b) (7)(C) has exhausted (b) (6), (b) (7)(C) FMLA leave and any time out for surgery on (b) (6), (b) (7)(C) foot is not FMLA protected leave.

Ms. Judith Catron has assured the US DOL, WHD, that if (b) (6), (b) (7)(C) returns to work in the future she will have a private place, shielded from any public view, with no windows, provided to (b) (6), (b) (7)(C) to express (b) (6), (b) (7)(C) breast milk and also adequate break time to express her milk until (b) (6), (b) (7)(C) child turns one year old.

As (b) (6), (b) (7)(C) has never returned to work after having (b) (6), (b) (7)(C) baby, (b) (6), (b) (7)(C) was never kept from expressing (b) (6), (b) (7)(C) breast milk when (b) (6), (b) (7)(C) was on (b) (6), (b) (7)(C) job. Therefore, no monetary violation was found due. However, as the employer verbally indicated (b) (6), (b) (7)(C) would not be allowed a private place to express (b) (6), (b) (7)(C) breast milk initially [as the employer did not know about the nursing mothers provision to the FLSA] a non-monetary violation was charged and the employer was credited with later agreeing to come into compliance once the employer was informed of the nursing mothers provision of the FLSA.

Section 211(a): RECORD KEEPING: No violation charged. The records kept by the City of Winston-Salem appear adequate.

Section 212: CHILD LABOR: No violation charged. No minors work for the City of Winston-Salem currently and none are ever hired on a permanent basis; however, some minors, sixteen years of age and older, may have worked as life guards at the city pools in past summers but all obtained Youth Employment Certificates and there is no evidence of any child labor violation.

DISPOSITION

INITIAL CONFERENCE:

An initial conference was held by telephone on July 10, 2012 with Ms. Judith H. Catron, Deputy Human Resource Director for the City of Winston-Salem. WHI (b) (6), (b) (7)(C) represented the Division. A Handy Reference Guide was provided to Ms. Catron. Later in the investigation on August 10, 2012, another HRG was left for (b) (6), (b) (7)(C) supervisor, (b) (6), (b) (7)(C) is the Construction and Maintenance Engineer and also the head supervisor in the Construction and Maintenance Unit where (b) (6), (b) (7)(C) and (b) (4) of (b) (6) co-workers are employed.

FINAL CONFERENCE:

A final conference was held by telephone with Ms. Judith H. Catron, Deputy Human Resource Director for the City of Winston-Salem on September 7, 2012. The undersigned WHI represented the Division.

The provisions of the FLSA were explained to the employer. She was told that the City of Winston-Salem is enterprise covered under 203(s)(1)(C) of the Fair Labor Standards Act of 1938 (hereafter referred to as the "FLSA") as an enterprise because it is a government entity, a local governmental, body with a budget in excess of \$392 million for 2012 (C-2).

Ms. Catron was also told that individual coverage is applicable for office employees that access the Internet regularly as they go to web sites outside the State of North Carolina.

However, Ms. Catron was told that as the City is automatically enterprise covered as a government entity, individual coverage was not determined on each employee because once enterprise coverage is established, every employee [unless an exemption is applicable] is entitled to the protection of the minimum wage, over time, child labor, and record keeping laws of the FLSA as well as the nursing mothers provision, if applicable.

Exemptions were discussed, especially the 13(a)(1) exemptions. Ms. Catron was told that although this investigation primarily centered on the nursing mothers provision of the FLSA, it appears that a 541.100 Executive Exemption is applicable to three employees in Construction and Maintenance Division (where (b) (6), (b) (7)(C) works). Although all employees' pay is expressed as an hourly rate, even salaried exempt employees' pay, the salaried exempt employees are guaranteed forty hours per week. If they fail to work the forty hours per week or work extra hours, the amount of pay paid to either bring them up to forty hours (and thus guarantee their salary) or the amount of money paid for the extra hours worked (under a system much like comp time) is designated on their pay as "NWT wages". Ms. Catron indicated that there were only three salaried exempt employees working in the Construction and Maintenance Division, consisting of 66 or more employees (see A-0).

Ms. Catron was told that to be exempt under Regulation 541.100, a manager must supervise at least two full time employees as his primary duty, have input on hiring and firing and be guaranteed a salary of at least \$455 per week. She confirmed that all three salaried managers meet all these requirements listed under 541.100.

Ms. Catron was told that no minimum wage violations were found as all employees appear to be paid at least \$7.25 per hour. (b) (6), (b) (7)(C) was paid (b) (6), (b) (7)(C) per hour. Ms. Catron indicated she looked at the rates for all (b) (4) employees of the City of Winston-Salem and only two are paid \$7.25 per hour. All the remaining employees are paid more than \$7.25 per hour, with most making significantly more than \$7.25 per hour.

Ms. Catron was told that no overtime violation was being charged as it appears all hourly employees make time and one-half for hours worked in excess of forty per week. She agreed and stated that all salary employees are exempt and the City of Winston-Salem does not have any salaried non-exempt employees. She was asked about the NWT wages and she indicated they are only paid to salaried exempt employees to either bring them up to their weekly salary in weeks they work less than forty hours or to reward them for working over forty hours per week. She indicated that the City is aware the exempt employees do not have to be paid overtime but has implemented a system of paying them a nominal amount for working over forty hours per week to reward their working over their normal schedule.

Ms. Catron was asked if hourly non-exempt employees were paid time and one-half as overtime pay for working over forty hours per week when some of those first forty hours paid were not working hours but were for holiday or sick pay or vacation pay, as it appeared this happened a time or two in the sample payroll (for example, see William Shookman, Jr. A-0-5, A-0-14). She indicated that the time and one-half overtime was only supposed to be paid to non-exempt hourly employees that actually worked the first forty hours each week, but with a payroll as large as the City's payroll, occasionally errors are made and non-work paid time is accidently counted as worked time which thus triggers the overtime pay. Ms. Catron stated that rather than later go back and deduct the overtime pay that was paid erroneously to the employee, the City usually just lets the error go and allows the employee to keep the overtime pay as it was the payroll department's error to have paid it in the first place and not any error on the part of the employee that received the overtime pay.

Ms. Catron was told that no record keeping violation was found. It appears the City keeps proper time and pay records.

Child Labor requirements were discussed. Ms. Catron was told that there are limitation on the jobs that employees under 16 years old may perform and limitations on their hours of work as well as Seventeen Hazardous Orders that limit the jobs of all minors. Ms. Catron was told that no child labor violation is being charged as no there was no indication of any child labor violations, although no minors were interviewed during this investigation.

Ms. Catron stated that no minors work for the City of Winston-Salem currently and none have worked in the past two years with the possible exception of some senior high school students, all at least sixteen years of age, that worked part-time in

past summers as life guards at the City pools. She indicated that any minors would have been required to obtain Youth Employment Certificates and would have been put on the regular payroll for the summer weeks they worked. She indicated life guards work only part-time and make at least minimum wage.

COMPLIANCE

At the final conference Ms. Catron agreed to remain in compliance with the FLSA regarding minimum wage, overtime, record keeping requirements and child labor requirements. In addition, she agreed to comply with the nursing mothers provision of the FLSA which requires employers like the City of Winston-Salem to allow a private place for nursing mothers to express their breast milk (other than a restroom) until their child is one year old and also requires that the mother be given adequate break time to express (b) (6) breast milk. Ms. Catron indicated that she had consulted with the City attorney before assuring the US DOL, WHD, that (b) (6), (b) (7)(C) and each nursing mothers working for the City of Winston-Salem would be provided a private office to express (b) (6) breast milk until (b) (6) child turns one year old and also allowed adequate break time to express her breast milk.

OTHER LAWS:

FMLA: The Family and Medical Leave Act is applicable to this employer as this enterprise had in excess of 50 employees [approximately (b) (4) employees] employed in 20 or more weeks in the current year or preceding year.

Poster: Posted- No violation noted.

General Notice: No violation found [see D-5-a through D-5-d which is contained in the City's Employee Handbook (D-5-e)].

Specific Notice: No violation noted.

(b) (7)(E) DATA:

(b) (6), (b) (7)(C) indicated that (b) (6) had a baby (b) (6), (b) (7)(C) having worked as a meter reader for the City of Winston-Salem in utility construction and maintenance until (b) (6), (b) (6). (b) (6) indicated that when (b) (6) doctor released (b) (6) to return to work on light duty before (b) (6) FMLA leave was up (b) (6), (b) (7)(C) employer wouldn't allow (b) (6) to return to work on light duty and indicated there was no place to put (b) (6) where (b) (6) could pump her milk and privacy. As no office job was offered to (b) (6), (b) (7)(C) doctor would not release (b) (6) to return to work to full duty as long as (b) (6) had FMLA leave to take. When (b) (6) FMLA leave ran out (b) (6), (b) (7)(C) still did not return to work, alleging an injury to (b) (6) foot (b) (6) sustained before (b) (6) baby was born was still hurting (b) (6) and (b) (6) physician would not allow (b) (6) to return to work and drive a city vehicle all day on (b) (6) regular job. (b) (6) was told by this WHI that as (b) (6) had already exhausted (b) (6) twelve weeks of FMLA leave, the US DOL, WHD could not provide (b) (6) any assistance with retaining (b) (6) job past June 27, 2012 but would investigate (b) (6) claim that (b) (6) right to express (b) (6) breast milk in a private place and to

have adequate break time to express that milk was being violated under the FLSA.

(b) (6), (b) (7)(C) was interviewed (B-1) and (b) (6), (b) (7)(E) the City had not agreed to provide (b) (6), a private place to express (b) (6), breast milk, nor adequate break time for this (b) (6), (b) (7)(E) as the Deputy HR Director, Ms. Catron, appeared to know nothing about the nursing mother's provision of the FLSA. The situation was discussed with (b) (6), (b) (7)(C) at the start of this investigation. (b) (6), (b) (7)(C) was afraid if (b) (6), expressed (b) (6), breast milk in (b) (6), work truck (b) (6), would be observed by other people and (b) (6), might be cited as being in violation of a city ordinance. On the other hand, it appeared it would be difficult for the City to provide a private place for (b) (6), (b) (7)(C) to express (b) (6), breast milk when (b) (6), job requires (b) (6), to drive all over the city all day long, frequently being more than thirty minutes away from (b) (6), office complex, given the fact that (b) (6), indicated (b) (6), would need to express (b) (6), breast milk up to four times per day. As (b) (6), (b) (7)(C) doctor did not want (b) (6), to express (b) (6), breast milk for use by (b) (6), baby unless 1) (b) (6), was allowed to work in an office setting or 2) (b) (6), was allowed extra time to wash up in order to avoid contamination to (b) (6), milk by the environment (b) (6), worked in [turning city water off and on in unsanitary locations], and given the fact that (b) (6), employer refused to allow (b) (6), to be on light duty working only in an office [claiming there was no job available in an office for (b) (6), to do currently and the City had gone out of its way to make an office job for (b) (6), to do during the last days of (b) (6), pregnancy], (b) (6), (b) (7)(C) did not return to work by the time (b) (6), FMLA leave was exhausted on June 27, 2012.

(b) (6), (b) (7)(C) provided a statement (B-1) (b) (6), (b) (7)(E) (b) (6), was kept informed and called several times during this investigation after this WHI met with (b) (6), in person on July 10, 2012 to get (b) (6), interview signed. (b) (6), was told later in the investigation that the City of Winston-Salem appeared to agree to provide (b) (6), a private place to express (b) (6), breast milk and also the time to adequately do express (b) (6), breast milk until (b) (6), baby turns one year old. At this time (b) (6), indicated that (b) (6), injured foot was worse and (b) (6), was out on leave without pay and didn't know when (b) (6), would be able to go back to work.


When this WHI called (b) (6), the last time on September 6, 2012 to report the final outcome of the investigation, (b) (6), (b) (7)(C) indicated that although the City of Winston-Salem had given (b) (6), additional time to be on leave after (b) (6), FMLA leave expired on June 27, 2012, (b) (6), was now having an issue with going beyond (b) (6), approved leave and what the actual deadline for the approved leave was.

(b) (6), (b) (7)(C) indicated (b) (6), thought this WHI had told (b) (6), that (b) (6), (b) (7)(C), was approved to be on leave until August 27, 2012 as (b) (6), (b) (7)(C), had written that date down with some notes (b) (6), took when this WHI called (b) (6), earlier on in this investigation and now (b) (6), wanted this WHI to write a letter stating the City told this WHI that (b) (6), (b) (7)(C) was granted leave until August 27, 2012. This WHI told (b) (6), (b) (7)(C) that 1) this WHI is not allowed to write letters, only supervisors are approved to write letters, and 2) this WHI only remembered telling (b) (6), that the City had agreed to comply on providing the private place to express (b) (6), breast milk and the break time to do it, and no exact date for (b) (6), return to work was mentioned to this WHI by Ms. Catron, -- only that Ms. Catron told this WHI that (b) (6), (b) (7)(C) supervisor was working to get (b) (6), the additional leave time (b) (6), needed. (b) (6), (b) (7)(C) admitted this WHI had told (b) (6), from the first day of this investigation that the WHD could not help (b) (6), obtain any additional leave time beyond the 12 weeks of FMLA leave that (b) (6), had exhausted, and any investigation would be contingent on getting compliance on the nursing mothers provision of the FLSA for (b) (6), (b) (7)(C) (if and when (b) (6), went back to work) and for other nursing mothers similarly situated working for the City of Winston-Salem.

(b) (6), (b) (7)(C) then indicated (b) (6) had not been able to return by August 27, 2012, even if that was the deadline to go back to work, as (b) (6) could not get the written permission from (b) (6) doctor to return to work which is required by the employer. (b) (6), (b) (7)(C) stated (b) (6) was fighting a suspension over this issue with (b) (6) employer. (b) (6), (b) (7)(C) was told that if (b) (6) goes back to work and the employer will not allow (b) (6) to express (b) (6) breast milk in a private place and the time to express that breast milk [until (b) (6) child turns one year old], (b) (6) should report it to this WHI.

Any correspondence should be addressed to: Ms. Judith H. Catron, Deputy Human Resource Director, City of Winston-Salem, PO Box 2511, Winston-Salem, NC 27102 (Telephone: 336-747-6809).

(b) (7)(E)



RECOMMENDATION: Administratively close this file.

Pubs: HRG, Fact Sheet #73 (Break Time for Nursing Mothers) – for copy see E-1.

(b) (6), (b) (7)(C), WHI , September 10, 2012

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1672809 Originating District: Columbia SC District Office
Local Filing Number: 2013-159-00018 Investigating District: Columbia SC District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 10/17/2012
Assignment Date: 10/17/2012

Employer Information

Trade Name: Kents Korner #27 Legal Name: Garvin Oil Compnay, Inc
Address: 295 Pine Log Road EIN: 57-0680705
Aiken, SC29803 County: Aiken
NAICS Code: 447110
No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 11/02/2010 BNPI:
To: 10/23/2012 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☒
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☒ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FMLA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FMLA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

Subject cov. under 203 (s)(1)(A)(i)(ii) all EEs cov. on enterprise basis. ER requested EE to provide a doctor's note in order to be allowed to continue expressing breast milk for (b) (6), (c) new born baby while at work. EE was allowed to express from Sep 17, 2012 until Oct 16, 2012 when (b) (6), (c) quit after (b) (6), (c) was told (b) (6), (c) could not express anymore without the note from (b) (6), (c) doctor. WHI explained the provisions of Subsection 7(r) as amended by "PPACA") and that the law does not require a doctor's note.

WHI Signature: _____ Date: 02/11/2013

Reviewed By: _____ Date: _____

Garvin Oil Company, Inc. Case # 1672809
Db a Kent's Korner #27 EIN# 57-0680705
678 East Pine Log Road
Aiken, SC 29801
803-649-1522
February 11, 2013

FLSA Narrative

Reason for Investigation: This investigation was initiated as (b) (7)(E) Kent's Korner #27 on 10/11/2012 (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) works as a cashier for this establishment. (b) (6), (b) (7)(C) (b) (7)(E) the store manager. (b) (6), (b) (7)(C) advised (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) would not be able to express breast milk while at work without a doctor's note. (b) (6), (b) (7)(C) is also concerned that a storage room that is being provided for (b) (6), (b) (7)(C) to express has no lock on the door and other EE's are interrupting (b) (6), (b) (7)(C) (See WH-3)

Period of Investigation: 10/23/2012 through 02/11/2013

Prior History: A search of records indicates that the subject firm located in Aiken, SC has been previously investigated by the Columbia, SC DO. (See exhibits E-7 through E-9)

(2007) Case # 1478391 – (b) (7)(E) – No violation found
(2001) Case # 1117755 – (b) (7)(E) – Violation of Sec 6 – \$82.15 in Bw's
(1998) Case # 428301 – (b) (7)(E) – Violation of Sec 6 - \$1214.00 in Bw's

MODO: The firm owns 21 establishments located in the Columbia, SC DO geographic area. See MODO control record.

Coverage

Nature of Business: Garvin Oil Company, Inc. has been registered with the SC Secretary of State since 1978. (See exhibit C-2) The company operates 21 Kent's Korner gas station/convenience stores and two travel centers that span the interstate 20 between the city of Aiken and the state city of Columbia. (See exhibit C-5) Section 3(s)(1)(A) of the Act is applicable throughout the investigatory period. As business activities are related and

performed through unified operation, per Sec 3(r)1, this constitutes an Enterprise. Combined ADV for the enterprise for the years ending 2009, 2010, and 2011 were well over \$5,000,000.00. (See exhibit C-4)

ER has two or more employees handling, selling gas, diesel, E85, kerosene, Off-road diesel, and propane. They also handle and sell products such as Hunt brother's pizza, sandwiches, fountain drinks, coffees, cappuccinos, and cold drinks. Limited stores feature Huddle House, Subway, and lotto. Mr. Chad Garvin Ingram has 100% ownership and acts as the president and CEO of the company. Specifically, he makes all executive decisions for the enterprise.

The employer denied any FLSA Sec. 16(b) suits within the investigative period.

Section 3(d) Employer:

(b) (6), (b) (7)(C) is the store manager and (b) (6), (b) (7)(C) is involved in the daily operations of the business. (See exhibit B-2, B-4 & C-1)

Scope of the Investigation

This investigation is limited to “Break Time for Nursing Mothers under the FLSA” The law became effective when the Affordable Care Act was signed March 23, 2010.

Section 7(r) of the Fair Labor Standards Act – Break Time for Nursing Mothers Provision.

(b) (6), (b) (7)(C) was allowed to express breast milk from September 17, 2012 until October 16, 2012. (b) (6), (b) (7)(C) was previously advised to provide a doctor's note regarding the need to express breast milk. On October 16, 2012 (b) (6), (b) (7)(C) was told (b) (6), (b) (7)(C) was not allowed to express anymore without a doctor's note, at that time (b) (6), (b) (7)(C) walked away and quit (b) (6), (b) (7)(C) job. The investigation revealed that there was a lock on the door of the storage room provided to (b) (6), (b) (7)(C) for the purpose of expressing breast milk. The door lock was tested and it worked. (See exhibits E-1 through E-3) (b) (6), (b) (7)(C) was not interrupted while expressing breast milk. (See exhibit B-2)

On 10/23/2012 WHI (b) (6), (b) (7)(C) met with (b) (6), (b) (7)(C) to discuss their (b) (7)(E) and to secure a written interview and (b) (7)(E) on this investigation. (See exhibits B-2 and D-4)

(b) (6), (b) (7)(C) stated that before returning from 12 weeks of FMLA leave (b) (6), (b) (7)(C) had a conversation with the Manager of Kent's Korner #27, (b) (6), (b) (7)(C) about need to express breast milk three times a day. Once back at job (b) (6), (b) (7)(C) was given access to the back storage room for the purpose of expressing milk. There were always two cashiers on duty at this establishment and one was taking care of the costumers while (b) (6), (b) (7)(C) was expressing breast milk. According to (b) (6), (b) (7)(C) was able to go inside the room and lock the door. (b) (6), (b) (7)(C) was allowed to express breast milk for about a month. On 10/10/2012 (b) (6), (b) (7)(C) was told by (b) (6), (b) (7)(C) manager that in order for (b) (6), (b) (7)(C) to continue expressing at work (b) (6), (b) (7)(C) would have to get a doctor's note stating that it was medically necessary for (b) (6), (b) (7)(C) to pump at work. (b) (6), (b) (7)(C) went to a scheduled doctor's appointment on 10/15/2012 and requested the note (b) (6), (b) (7)(C) was instructed to get. (b) (6), (b) (7)(C) doctor in turn told (b) (6), (b) (7)(C) that the note should be given to (b) (6), (b) (7)(C) by (b) (6), (b) (7)(C) pediatrician since it has to do with (b) (6), (b) (7)(C) baby. (b) (6), (b) (7)(C) returned to work on 10/16/2012 without the doctor's note. The manager, (b) (6), (b) (7)(C) told (b) (6), (b) (7)(C) that without a doctor's note (b) (6), (b) (7)(C) was not going to be allowed to pump anymore while at work. At that point (b) (6), (b) (7)(C) walked out of (b) (6), (b) (7)(C) job. (See exhibit B-2, B-3 and B-4)

On 10/23/2012 WHI (b) (6), (b) (7)(C) met with store manager (b) (6), (b) (7)(C) at the Kent's Korner #27 located at 678 East Pine Log Road, Aiken, SC 29801. During the interview store manager (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) was released back to work by (b) (6), (b) (7)(C) doctor after 12 weeks of FMLA leave from July 14, 2012 until September 17, 2012. (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) release was 100% back to work. (b) (6), (b) (7)(C) stated that once (b) (6), (b) (7)(C) requested that (b) (6), (b) (7)(C) be allowed to express every three hours (b) (6), (b) (7)(C) was asked to get a doctor's note. It took (b) (6), (b) (7)(C) almost two months and (b) (6), (b) (7)(C) never got a doctors' note according to the store manager, however (b) (6), (b) (7)(C) was allowed to use the back storage room for that purpose. (See exhibit B-3 and B-4) WHI advised the store manager that (b) (6), (b) (7)(C) should not be requiring EEs requesting time to express breast milk to provide a doctor's note. Inspection of the back storage room reveals that the door has a working door lock that can be locked from the inside. (See exhibits E-1 through E-4 for photos of the door and storage room) The manager was aware of (b) (6), (b) (7)(C) upcoming appointment with (b) (6), (b) (7)(C) doctor during the month of October 2012 (b) (6), (b) (7)(C) recollection of dates differ from (b) (6), (b) (7)(C) dates) (b) (6), (b) (7)(C) asked (b) (6), (b) (7)(C) to get a doctor's note stating how often (b) (6), (b) (7)(C) needed to express. (See exhibit B-3 and B-4) (b) (6), (b) (7)(C) admitted that when (b) (6), (b) (7)(C) returned to work without the doctor's note (b) (6), (b) (7)(C) told (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) was not going to be allowed to express anymore. (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) reply was that if (b) (6), (b) (7)(C) was not going to be allowed to pump anymore then (b) (6), (b) (7)(C) needed to quit and (b) (6), (b) (7)(C) walked

right out of the store. (See exhibit B-2, B-3 and B-4)

Store Manager also added that while (b) (6), (b) (7)(C) was allowed to express breast milk while at work the task that began taking 30 minutes changed to an hour and half for an ounce of breast milk. (b) (6), (b) (7)(C) also stated that according to (b) (6), (b) (7)(C) co-workers while (b) (6), (b) (7)(C) was supposed to be expressing (b) (6), (b) (7)(C) was apparently engaged on (b) (6), (b) (7)(C) facebook page using (b) (6), (b) (7)(C) smart phone. (See exhibits B-4)

On 11/14/2012 WHI (b) (6), (b) (7)(C) had telephonic conversation with (b) (6), (b) (7)(C) to verify once more that no one at the store ever walked into the storage room while (b) (6), (b) (7)(C) was expressing and (b) (6), (b) (7)(C) stated the no one ever did that. (b) (6), (b) (7)(C) was asked if anyone ever pulled on the door while (b) (6), (b) (7)(C) was expressing and again (b) (6), (b) (7)(C) stated that no one ever did that. (b) (6), (b) (7)(C) stated that during the initial week of expressing (b) (6), (b) (7)(C) had a walkie talkie radio and no one ever called (b) (6), (b) (7)(C) on the radio to come up front. The radio was used by (b) (6), (b) (7)(C) for about a week and then the radio was taken to another store for unrelated reasons. (See addendum to exhibit B-2)

On 11/14/2012 minutes later (b) (6), (b) (7)(C) left a voice message on WHI (b) (6), (b) (7)(C) BB stating that on occasions the co-worker would ask what is taking so long over the radio during the time that the radio was available (a week).

Effective March 23, 2010, the Patient Protection and Affordable Care Act amended the FLSA to require employers to provide a nursing mother reasonable break time to express breast milk after the birth of (b) (6), (b) (7)(C) child. The amendment also requires that employers provide a place for an employee to express breast milk. As per statutory language below:

Section 7(r)

(1) An employer shall provide—

(A) a reasonable break time for an employee to express breast milk for her nursing child for 1 year after the child's birth each time such employee has need to express the milk; and

The company satisfied its obligations under the law by proving (b) (6), (b) (7)(C) with the necessary time to express (b) (6), (b) (7)(C) breast milk. (b) (6), (b) (7)(C) explained that (b) (6), (b) (7)(C) was allowed to express breast milk every three

hours for a period of one month before (b) (6), (b) (7)(C) quit (b) (6), (b) (7)(C) job.

(B) a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk.

The company satisfied its obligations under the law by proving (b) (6), (b) (7)(C) with private location to express (b) (6), (b) (7)(C) breast milk. (b) (6), (b) (7)(C) explained that (b) (6), (b) (7)(C) was given access to the back storage room. (b) (6), (b) (7)(C) was able to go inside the room and lock the door.

(2) An employer shall not be required to compensate an employee receiving reasonable break time under paragraph (1) for any work time spent for such purpose.

(b) (6), (b) (7)(C) was paid for the time (b) (6), (b) (7)(C) spent expressing even when under the law, an employer shall not be required to compensate an employee receiving reasonable break time from work for time spent expressing milk.

(3) An employer that employs less than 50 employees shall not be subject to the requirements of this subsection, if such requirements would impose an undue hardship by causing the employer significant difficulty or expense when considered in relation to the size, financial resources, nature, or structure of the employer's business.

The company has 8 employees at this location and approximately (b) (4) employees operating 21 Kent's Korner gas station/convenience stores and two travel centers that span the interstate 20 between the city of Aiken and the state city of Columbia

(4) Nothing in this subsection shall preempt a State law that provides greater protections to employees than the protections provided for under this subsection.

South Carolina Breast Feeding Law, SECTION 63-5-40. Breastfeeding, states; (A) A woman may breastfeed her child in any location where the mother and her child are authorized to be, and (B) Breastfeeding a child in a location where the mother is authorized to be is not considered indecent exposure. There is no enforcement provision and no Workplace Pumping Law in South Carolina.

DISPOSITION

(b) (7)(E)

On 02/11/2013 a telephonic final conference was conducted between Mr. David L. Slyter Director of Operations for Garvin Oil Company Inc. and WHI (b) (6), (b) (7)(C). This had been explained earlier to the Manager (b) (6), (b) (7)(C).

WHI explained the provisions of Subsection 7(r) as amended by the Patient Protection and Affordable Care Act ("PPACA") and that the law does not require a doctor's note.

In any future instance they should not to require any employee requesting time to express under 7 (r) to provide a doctor's note explaining the medical necessity of expressing.

(b) (6), (b) (7)(C) Notification: (b) (7)(E) (b) (6), (b) (7)(C) was verbally advised of (b) (6), (b) (7)(C) 16b rights on 02/11/2013 and no further action taken.

Publications provided: WHD Fact Sheet 73 "Break Time for Nursing Mothers under the FLSA" and Fact Sheet 77A "Prohibiting Retaliation under the Fair Labor Standards Act (FLSA)

Recommendation: Request this case is administratively closed.

Respectfully submitted,

(b) (6), (b) (7)(C)

Wage & Hour Investigator

Kents Korner #27 Case ID: 1672809

Charleston Field Office

(b) (6), (b) (7)(C)

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1673123 Originating District: Jackson MS District Office
Local Filing Number: 2013-208-00371 Investigating District: Jackson MS District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 10/18/2012
Assignment Date: 12/04/2012

Employer Information

Trade Name: Health South North Legal Name: Health South Corporation
Address: 4100 Austin Peay Highway EIN: 63-1107459
County: Shelby
NAICS Code: 62199
Memphis, TN38128 No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 12/04/2010 BNPI:
To: 11/24/2012 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Full Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

Total Violations Under FLSA : 1 \$0.00

WHISARD Compliance Action Report

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

FMLA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FMLA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

(43.5 hrs) FLSA NM 3(s)(1)(B) cov ent. Viols fd, fail to pvd rea breacktime & location not pvt. (b) (6), (b) (7)(C) not pvd freq to express milk as needed & loc not free from interruptions. (b) (7)(E). RNT's wking spor during lunch; not clking backin or signing log bk; RK viol; FC by phone 1/30/13 w/Atty Paul Prather, Kelly Estes (Bham legal con) & Andriene Huntley (HR). ER ATC per Att; will rev NM pol & cond intnal audit on lunchbr hw. No CMPs or BW. Pubs HRG, Regs 516, 541, 778 & 785, Rec Adm Close.

WHI Signature: _____ Date: 02/06/2013

Reviewed By: _____ Date: _____

FAIR LABOR STANDARDS ACT NARRATIVE

Health South Rehabilitation Hospital North
4100 Austin Peay Highway
Memphis, TN 38128
Telephone: (901) 213-5400
Federal EIN: 631107459
Case ID: 1673123

COVERAGE

The subject firm is an inpatient rehabilitation hospital located at 4100 Austin Peay Highway, Memphis, TN, tel. (901) 213-5400. The legal name is Health South Methodist Rehabilitation Hospital (HSMRH) a Limited Partnership d/b/a Health South Rehabilitation Hospital North. The owners are HSMRH (b) (4) and Health South Corporation (b) (4). The corporate headquarters is Health South Corporation, 32660 Grandview Parkway, Suite 200, Birmingham, AL 35243, tel. (205) 970-4099. The enterprise operates more than 100 branches in 27 states and Puerto Rico. The firm was incorporated in 2002 in the state of Delaware. (Ex. C-5 to C-5-d) The corporate officers are; Jay Grinney (President/CEO) and Jon F. Hanson, Chairman of the Board of Directors. (Ex. C-3) The firm was represented by Attorney Paul Prather, Littler Mendelson, 3725 Champion Hills Drive, Suite 3000, Memphis, TN 38125, Direct: (901) 322 1225, Fax: (901) 531-8051 and Mobile: 901-830-4137. (Ex. D-22)

There are (b) (4) employees at the subject firm. (Ex. D-20 to D-20-c) The Annual Dollar Volume (ADV) for the corporation for the past three years has been well over (b) (4) (Ex. C-4 to C-4-a) The employees also handled goods that moved in commerce; such as, mail, medical equipment, medical supplies, medications and food products. The enterprise meets the coverage criteria under the Fair Labor Standards Act (FLSA) Section 3(s) (1)(B).

MODO: The Birmingham District Office is the MODO. (b) (7)(E)

(Ex. D-1 to D-1-a)

3(d) Employer: Marsha Taylor, Chief Executive Officer, meets the definition of a 3(d) employer. She acts directly in the interest of an employer in relation to an employee. Ms. Taylor manages the daily operations of the firm. She hires, fires, supervises, enforces policies and makes business decisions regarding facility operations. (Ex. C-1-c)

Family Medical Leave Act (FMLA): The firm is a covered enterprise in that there are approximately 170 employees and at least 50 employees within a 75-mile radius. The employees have been employed more than 20 or more workweeks in the current and previous calendar year. The firm has the current FMLA poster displayed and the company handbook provides information regarding the FMLA leave policy. (Ex. C-6 to C-6-b and C-7 to C-7-c)

Period of Investigation: 12/4/2010 to 11/24/2012

EXEMPTIONS (Section 13(a)(1))

541.100 Executive Exemption was found to be applicable for; (b) (6), (b) (7)(C), Chief Nursing Officer and Hospital Administrator; (b) (6), (b) (7)(C), Plant Operations Director; (b) (6), (b) (7)(C), Nutrition Services Manager; (b) (6), (b) (7)(C), Area Marketing Director; (b) (6), (b) (7)(C), Director Therapy Operations; and (b) (6), (b) (7)(C), Case Management Director. These managers met the salary requirement of \$455 per week. Their primary duty is management, they direct the work of two or more full-time employees, they have the authority to hire and fire and their recommendations are given particular weight. (Ex. D-20 to D-20-c)

541.200 Administrative Exemption was found applicable for (b) (6), (b) (7)(C), Quality/Risk Director; (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) (Rehab Liaisons); Adrienne Huntley, Human Resources Director; and (b) (6), (b) (7)(C), Accountant. These employees perform non-manual work directly related to business operations and they

exercise discretion and independent judgment regarding matters of significance. (Ex. D-20 to D-20-c)

541.301 Learned Professional Exemption was found applicable for 17 employees performing work that requires advance knowledge in the field of science and/or learning, specialized intellectual instruction and an academic degree. (Ex. D-20 to D-20-c)

Reason for Investigation:

(b) (6), (b) (7)(C) notified the employer of (b) (6), (b) (7)(C) intent to express milk for (b) (6), (b) (7)(C) born (b) (6), (b) (7)(C) (b) (7)(E) the employer did not provide a person to cover (b) (6), (b) (7)(C) patients when (b) (6), (b) (7)(C) needed to express milk. (b) (6), (b) (7)(C) stated during times when (b) (6), (b) (7)(C) was expressing milk that (b) (6), (b) (7)(C) was constantly interrupted by intercom pages that a certain patient's room needed (b) (6), (b) (7)(C) attention or (b) (6), (b) (7)(C) was needed at the desk. (b) (6), (b) (7)(C) also stated the location was not secure. As a result of not being able to express milk as frequently as needed, (b) (6), (b) (7)(C) stated (b) (6), (b) (7)(C) milk dried up. (b) (6), (b) (7)(C) further (b) (7)(E) after clocking out for lunch that (b) (6), (b) (7)(C) and some of the Rehab Nurse Technicians worked during their lunch when paged to answer a patient's call light. (b) (6), (b) (7)(C) also (b) (7)(E) not being paid for completing required training on (b) (6), (b) (7)(C) home computer.

(b) (6), (b) (7)(C) (b) (7)(E) regarding reasonable accommodations for nursing mothers were (b) (7)(E) (b) (6), (b) (7)(C) was not provided the frequency to express milk and the location was not free from intrusion in accordance with the FLSA Section 7(r)(1)(A)(B). (b) (6), (b) (7)(C) (b) (7)(E) regarding some employees working off the clock during lunch was also (b) (7)(E) (b) (6), (b) (7)(C) (b) (7)(E) was not compensated for training completed on (b) (6), (b) (7)(C) home computer (b) (7)(E).

History:

Case ID 1672080: Self Audit for investigation period 10/21/10 to 10/11/12. FLSA violation was failure to pay proper overtime. The employer agreed to comply and agreed to pay \$9,740.65. (Ex. D-2 to D-2-a)

Case ID 1638925: A Limited Investigation for period 1/9/11 to 2/14/12. FMLA violation; the employee was dismissed or fired. The employer agreed to resolve; back wages agreed \$8,986.62. (Ex. D-3 to D-3-a)

Case ID 1523341: A Limited Investigation for period 6/6/08 to 10/29/08; FMLA (b) (7)(E)-employee ineligible. (Ex. D-4 to D-4-a)

Case ID 1446205: (b) (7)(E) for period 4/16/06 to 5/6/06. FLSA Section 6 no violation found. The employer was (b) (7)(E) (Ex. D-5 to D-5-a)

Case ID 1237357: (b) (7)(E) for period 6/16/02 to 6/10/02. FLSA violation was failure to pay minimum wage. The employer agreed to comply and agreed to pay \$412 in back wages. (Ex. D- 6 to D-6-a)

Case ID 1217853: A Limited Investigation for period 8/16/02 to 8/16/02. FMLA violation; the employer failed to reinstate the employee to her same or equivalent position. The employer agreed to comply and agreed to resolve. (Ex. D-7 to D-7-a)

Case ID 1017510: A Limited Investigation for period 1/4/98 to 1/4/99 limited to (b) (6), (b) (7)(C) FMLA violation; the employee was dismissed or fired. The employer agreed to resolve; back wages \$9,000. (Ex. D-8 to D-8-a)

Case ID 1058275: (b) (7)(E) for period 12/19/99 to 1/1/2000. FLSA violation was failure to pay minimum wage. The employer agreed to comply and agreed to pay \$412 in back wages. (Ex. D- 9 to D-9-a)

Case ID 1029895: Full investigation for period 7/31/98 to 11/6/99. FLSA was failure to pay proper overtime and failure to keep accurate records. The employer agreed to comply and agreed to pay \$8,861.54. (D-10 to D-10-a)

Case ID 1044405: (b) (7)(E) for period 9/1/99 to 9/16/99. FLSA violation was failure to pay minimum wage. The employer agreed to comply and agreed to pay \$164.80 in back wages. (Ex. D-11 to D-11-a)

Case ID 439145: (b) (7)(E) for period 4/20/97 to 4/18/99. FLSA violation was failure to pay proper overtime. The employer agreed to comply and agreed to pay \$1,471.14. (Ex. D-12 to D-12-a)

Case ID 374841: Full Investigation for period 11/15/95 to 11/15/97. FMLA violation; employee terminated and specific notice not given. The employer agreed to comply and pay back wages. (Ex. D-13 to D-13-a)

Case ID 383697: (b) (7)(E) for period 3/15/98 to 3/15/98. Last paycheck not received. The employer agreed to pay \$412. (Ex. D-14 to D-14-a)

Case ID 261786: (b) (7)(E) for period 8/15/96 to 2/15/96. No FMLA violation found. (Ex. D-15 to D-15-a)

Case ID 211619: (b) (7)(E) for period 2/15/94 to 3/15/94. Last paycheck not received. The employer agreed to pay \$375.00. (Ex. D-16 to D-16-a)

Case ID 163700: (b) (7)(E) for period 3/15/91 to 3/15/93. FLSA overtime violation; the employer agreed to pay \$375 in back wages. (Ex. D-17 to D-17-a)

Case ID 163695: (b) (7)(E) for period 11/15/91 to 11/15/92. FLSA overtime violation; the employer agreed to pay \$80. (Ex. D-18 to D-18-a)

Case ID 148852: (b) (7)(E) for period 1/15/93 to 1/15/93. The employer treated the employees as contract and would pay employees in a month or so. The employer agreed to pay \$340 in back wages. (Ex. D-19 to D-19-a)

Regarding Off-the-Clock Hours Worked

The investigation revealed (4) employees worked sporadically off the clock approximately 15 minutes after clocking out for lunch. While the employees were eating, the desk would page that assistance was needed for a patient's room. The employees responded to the pages but they did not clock back in or sign the exception log book because according to management all

employees are supposed to take a 30-minute lunch. The 15 minutes did not bring the employees hourly rate below minimum wage. Pursuant to ADD Lewis instructions, no back wages were computed due to hours worked were sporadic and de-minimis. The employer was advised to conduct an internal audit and compensate any affected employees. (Ex. B-4-c, B-5, B-6, B-12 and B-13)

Section 6, Minimum Wage:

There were no minimum wage violations. The lowest hourly rate is \$ 8.19 per hour. (Ex. A-0 to A-0-II)

Section 7: Overtime:

There were no overtime violations found; the computer automatically calculates overtime accurately for hours worked over 40 in a workweek. (Ex. A-0 to A-0-II)

Section 7 (r): Break Time for Nursing Mothers

The employer failed to provide reasonable accommodations relating to the frequency employees needed to express milk. (Ex. B -4 to B-4-a and B-14) Additionally the location was not free from intrusion of co-workers and/or patients. (Ex. B-4 to B-4-a, B-10 and B-14)

Section 11, Record Keeping:

The employer maintains time and pay records in accordance with Regulation 516. (Ex. A-0 to A-0-II) However, the employer's time records did not accurately reflect the hours worked during lunch break by some employees. (Ex. B-4-c, B-5, B-6, B-12 and B-13))

Section 12, Child Labor:

No child labor violations were found. There are no employees are under age 18 employed. (Ex. B-2, B-3, B-5, B-6, B-8, B-9, B-11, B-12 and B-13-a)

DISPOSITION

On 1/31/2013 (b) (6), (b) (7)(C) was notified regarding the disposition of (b) (6), (b) (7)(E)

Handy Reference Guide: The Handy Reference Guide was given to Paul Prather, Attorney, at the Initial Conference on 12/14/2012.

A final conference was held on 1/30/2013 by telephone with Paul Prather (Attorney), Kelley Estes (Legal Consultant Birmingham) and Adrienne Huntley (Human Resources). WHI (b) (6), (b) (7)(C) represented the agency. The Fair Labor Standards Act (FLSA) provisions relating to Coverage (individual and enterprise), Minimum Wage, Overtime, Break Time for Nursing Mothers, Record Keeping, Child Labor and 541 Exemptions were explained.

Mr. Prather assured future compliance and stated:

1. The employer is committed to complying with all minimum wage and overtime statutes.
2. The employer maintains records in accordance with statutory requirements and is committed to continuing record-keeping practices that comply with the law.
2. The employer does not employ any employees under age 18.
3. The employer will continue to maintain a facility that meets statutory requirements to accommodate nursing mothers and will makes time available for nursing mothers to express milk based on their need.

The violations were discussed and Mr. Prather was advised the nursing mothers were not provided the frequency needed to express milk and they were not completely relieved from duty. As well as, the location was by a bathroom and not free from intrusion of co workers and/or or patients. (B-4 to B-4-a, B-10 and B-14) Mr. Prather stated the employer will review their policy and assess moving the lactation room to a more private area of the hospital. The employer will also educate managers regarding nursing mother's requirements in accordance with the law.

We discussed that some employees were working off the clock during lunch when they responded to intercom pages to assist patients but did not clock back in. Mr. Prather was also advised that the employees did not clock back in because they were concerned about being

reprimanded by management for not taking a 30 minute lunch break in accordance with policy. Mr. Prather stated the employer will conduct an internal investigation of the alleged off the clock hours during lunch. Mr. Prather will prepare and forward a summary of their findings within 30 days. He also stated the employer will re-educate employees regarding the policies and procedures to follow if any employee has to work during lunch so they can be compensated.

According to Mr. Prather, there are no pending lawsuits against the subject firm and the firm is not operating under bankruptcy protection. (Ex. C-1-a) Mr. Prather was advised a Civil Money Penalty could be assessed for repeated and willful violations of Section 6, Section 7 and Child Labor laws. He was also informed that employees have a private right of action under Section 16(b).

The following publications were provided; HRG, Fair Labor Standards Act, Regulations: Part 516 (Records to be Kept by Employers), Part 541 (Exemptions), Part 785 (Hours Worked), WH-778 (Overtime Compensation) and WH-1330 (Child Labor).

RECOMMENDATIONS

(b) (7)(E) I recommend this file be administratively closed.

Future Correspondence should go to:

Paul Prather, Attorney
Littler Mendelson, PC
3725 Champion Hills Drive, Suite 3000
Memphis, TN 38125
Direct Line: (901) 322-1225
Fax: (901) 531-8051
Cell: (901) 830-4137

Health South North Case ID: 1673123

(b) (6), (b) (7)(C), WHI

Date

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1675589 Originating District: Louisville KY District Office
Local Filing Number: 2013-235-00053 Investigating District: Louisville KY District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 11/09/2012
Assignment Date: 11/09/2012

Employer Information

Trade Name: Fetter Printing Company

Legal Name: Fetter Group

Address: 700 Locust Lane

EIN: 61-0191505

County: Jefferson

NAICS Code: 32619

Louisville, KY 40217

No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 01/07/2011

BNPI:

To: 01/06/2013

Reinvestigation: ☐

Investigation Type: (b) (7)(E)

Recurring Violation: ☐

Investigation Tool: Full Investigation

Future Compliance Agreed: ☒

Compliance Status: Agree to Comply

Involved in AG: ☐

Recommended Action:

BWFS: ☒

RO/NO Review: ☐

CMP: ☐

Follow Up Investigation: ☐

Litigation: ☐

Other Action: ☐

Civil Action: ☐

Denial of Future Certificate: ☐

Criminal Action: ☐

BW Payment Deadline: 01/11/2013

Submit For Opinion: ☐

Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSA Totals:	2	2	\$1,053.49	\$1,053.49	\$0.00	\$0.00	

Total Violations Under FLSA : 3 \$0.00

WHISARD Compliance Action Report

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

FMLA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FMLA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	2	Unduplicated Employees Agreed:	2
Total Amount BWs Computed:	\$1,053.49	Total Amount BWs Agreed:	\$1,053.49
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

29 hr* FLSA EC via 203s(1)(a). FMLA cvd. ER: (b) (7)(E) (b) (6), (b) (7)(C) ER did not provide time and place for expressing milk; (b) (7)(E) . MW no viol; OT viol for paying ST for OT; RK viol for not separating ST from OT; No CL viol. No FMLA viol; ER ATC in future and pay BW. ER ATP 2 EEs \$1,053.49 in BW. (b) (7)(E) Admin close upon pmt.

WHI Signature: _____ Date: 01/15/2013

Reviewed By: _____ Date: _____

**Narrative Report
Fair Labor Standards Act
January 15, 2013**

**EIN: 61-0191505
Case ID: 1675589
Local File Number: 2013-235-00053**

Fetter Printing Company
d/b/a Fetter Group
700 Locust Lane
Louisville, KY 40217
(502) 471-3705

COVERAGE

The subject firm is a printing company with one location at the above address. The corporate officers are Thomas Gill, President, Chief Executive Officer, and owner, Ronald Watkins, Senior Vice President, John Roos, Chief Financial Officer, et al. The point of contact for the firm during the investigation was John Roos @ (502) 471-3705 and Keith Scully, Human Resources Manager @ (800) 234-4771. (Exhibit: B – 6, C – 1, 5 – 7)

The firm utilizes Snelling Personnel Services to recruit employees. The employees are then, hired, assigned work, and supervised by various department managers such as (b) (6), (b) (7)(C) [REDACTED], who are acting directly in the interest of firm. The department managers such as (b) (6), (b) (7)(C) [REDACTED] are employers as defined in Section 203(d) of the Fair Labor Standard Act (FLSA). (Exhibit: B – 1, 3 – 5)

The firm employs (b) (4) [REDACTED] employees who handle goods that have been moved in or produced for interstate commerce such as paint labels made for Sherwin-Williams®, PPG Porter®, and Benjamin Moore®. (Exhibit: B – 1, 4, 5, 6-b, C – 1-a)

The enterprise annual dollar volume of sales (ADV) for 2009, 2010, and 2011 averaged (b) (4) [REDACTED] each year. (Exhibit: B – 6, C – 1-a)

Enterprise coverage is applicable under Section 203(s)(1)(a) for the investigative period January 7, 2011 to January 6, 2013.

Case History: WHISARD shows no previous history for the company.

Investigation Period: January 7, 2011 to January 6, 2013.

Nursing Mother Eligibility:

Pursuant to section 207(r)(1) the employer, has employee with child less than one year old, section 207(r)(3), employs 50 or more employees, and has employees who are not exempt from section 207 of the FLSA.

EXEMPTIONS

Section 213(a)(1)

Part 541 exemptions were tested and applicable to various employees such as the manufacturing supervisor, (b) (6), (b) (7)(C) however, the following employees did not meet any tested exemptions or the administrative exemption claimed by the employer: (Exhibit B – 3)

Part 541.200 administrative employees.

(b) (6), (b) (7)(C) – As a label order specialist, (b) (6), (b) (7)(C) takes the orders from the customers via phone, facsimile, or e-mail and enters the information into the company's ordering system. (b) (6), (b) (7)(C) keeps track assist the customers with information regarding the progress of the order from order to delivery. (b) (6), (b) (7)(C) makes a guaranteed weekly salary of at least \$455; however, (b) (6), (b) (7)(C) duties were not directly related to management or general business operation and (b) (6), (b) (7)(C) did not use independent judgment or discretion while performing her duties. (Exhibit: B – 1, D – 1, 13)

Based on an interview with (b) (6), (b) (7)(C), a review of (b) (6), (b) (7)(C) duties and responsibilities, and a discussion with

Mr. Roos, (b) (6), (b) (7)(E) duties as it relates to the general business operation were routine and repetitive and did not require independent decision making and the use of judgment. This and no other exemptions were applicable to (b) (6), (b) (7)(C) and the other Label Order Specialists. (Exhibit: B – 1, D – 1, 13)

(b) (6), (b) (7)(C) also made a guaranteed weekly salary of at least \$455, (b) (6) is the other Label Order Specialist and (b) (6), (b) (7)(E) duties were identical to that of (b) (6), (b) (7)(C); therefore, this and no other exemptions were applicable to (b) (6), (b) (7)(C).

There were four Team Leader Client Services employees, such as (b) (6), (b) (7)(C), who received a guaranteed weekly salary of at least \$455. These employees worked with the clients to develop artwork that best articulates the customer's needs and independently develop the end product based on information given. They monitor quality and have the authority to accept or reject a product. As a result, these employees met requirements for the exemption. (Exhibit: B – 4, D – 12 – 12-a)

STATUS OF COMPLIANCE

(b) (7)(E) The investigation began as (b) (7)(E) (b) (6), (b) (7)(C) who (b) (7)(E) the employer terminated (b) (6), (b) (7)(E) after (b) (6), (b) (7)(E) returned from expressing milk in the bathroom while on (b) (6), (b) (7)(E) scheduled break time. (Exhibit: B – 2 – 2-b)

(b) (7)(E) and other FLSA overtime violations were found. (b) (6), (b) (7)(C) is not due any back wages. An attempted was made to contact (b) (6), (b) (7)(E) and the provided phone number was disconnected. (b) (7)(E) See violations below. (Exhibit: A – 37, B – 10 – 10-b, D – 1 – 24)

Section 206 – Minimum Wage:

Based on a record review and employees' interview, the firm paid at least the applicable minimum wage to the employees for all hours worked. No violation found. (Exhibit: A – 0-a – j, B – 1 – 5)

Section 207 – Overtime:

Based on a record review, employees' interviews, and the initial conference interview, the firm was found to be in violation of the overtime requirements of the FLSA. The firm paid straight

time to non exempt employees for hours worked over 40 in the workweek. As a result, two (2) employees are due \$1,053.49 in overtime back wages. (Exhibit: A – 1, 2, B – 1 D – 1)

Section 207(r)(1)(A)

The employer did not provide a reasonable break time for an employee to express breast milk for (b) (6), (b) (7)(C) nursing child for 1 year after the child's birth each time such employee has need to express the milk. (Exhibit: B – 2 – 2-b)

Section 207(r)(1)(B)

The employer did not provide a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk. (Exhibit: B – 2 – 2-b)

Section 207(r) Findings: (b) (6), (b) (7)(C) was sent to the employer as a temporary employee by Snelling Personnel Services. (b) (6), (b) (7)(C) worked eight (8) hours for one day on October 30, 2012. (b) (6), (b) (7)(C) received at least the applicable minimum wage (\$7.25) for all hours worked. The employer was unaware of (b) (6), (b) (7)(C) need to express milk and therefore could not have directed (b) (6), (b) (7)(C) to an appropriate location. According to (b) (6), (b) (7)(C) interview, (b) (6), (b) (7)(C) went to the bathroom on (b) (6), (b) (7)(C) own to express milk and one of the supervisors saw (b) (6), (b) (7)(C) and informed (b) (6), (b) (7)(C) immediate supervisor who requested to see (b) (6), (b) (7)(C) immediate supervisor (b) (6), (b) (7)(C) informed (b) (6), (b) (7)(C) will be terminated for taking too long on (b) (6), (b) (7)(C) break.

A discussion with Mr. Roos revealed that the employer was unaware of (b) (6), (b) (7)(C) situation (nursing mother) until after (b) (6), (b) (7)(C) was seen in the bathroom expressing breast milk. Mr. Roos subsequently identified a location (other than the bathroom) at the establishment that was suitable for expressing milk. Mr. Roos explained had someone in management made aware of (b) (6), (b) (7)(C) situation, by Snelling Personnel Services, they could have provided a suitable location. Snelling Personnel Services replaced (b) (6), (b) (7)(C) with another employee. (b) (6), (b) (7)(C) stated in (b) (6), (b) (7)(C) interview (b) (6), (b) (7)(C) did not want to return to work for the employer. (Exhibit: B – 2 – 2-a, C – 4, D – 15, 16)

(b) (7)(E)



seeking future compliance from the employer.

Method of Computation:

Reconstructed hours Worked:

The firm did not keep records of hours worked for the salary non exempt employees'; therefore, the hours worked were reconstructed at 43 hours per week based on employee's interview statements and agreement by the employer. (Exhibit: B – 1, 6-b)

Minimum Wage: No violation, no computation made.

(b) (7)(E)

The employer was given credit for holidays and non overtime workweeks. (Exhibit: A – 1, 2)

Total Back Wages Due:

Minimum Wage – No violation

Overtime – 2 employees due a total of \$1,053.49

Total due - \$1,053.49

Section 211 – Recordkeeping:

The firm was found to be in violation of the record keeping requirements of the FLSA. The firm did not accurately record and compensate overtime hours worked by non exempt employees. (Exhibit: B – 1)

Section 212 – Child Labor:

Based on a tour of establishment, records review, and employees' interview no child labor violation was found. (Exhibit: B – 1, 3 – 5, 6-c)

Family and Medical Leave Act (FMLA) The firm employed fifty (50) or more employees for 20 workweeks in the current or preceding calendar year and therefore is a covered employer under FMLA. Fifty (50) or more employees work within 75 miles of the location and there are eligible employees that have been employed for 12 months and worked at least 1250 hours over the previous 12 months. (Exhibit: B – 6-b, C – 1-a, d)

DISPOSITION

A final conference was held on January 9, 2013 at the firm's location at 700 Locust Lane Louisville, KY 40217. The contact person for the firm is Mr. John Roos @ (502) 471-3705. The conference was attended by WHI (b) (6), (b) (7)(C) and Keith Scully. Mr. Roos was unable to make it and the violations were explained to Mr. Roos and Mr. Scully on January 4, 2013 on a prior visit to the establishment.

The application of the law as it applied to the firm was explained, with specific emphasis on coverage, exemptions, minimum wage, overtime, record keeping and child labor.

This WHI explained the exemptions that were tested and how it did not apply to (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C). No other exemptions were claimed of applicable.

This WHI explained no minimum wage violation was found.

This WHI explained the firm is in violation of the overtime requirements. They did not pay two non exempt employees the required time and one-half for hours worked in excess of 40 in the workweek. The firm paid all hours worked at the straight time rate. As a result, the employees are owed the additional half-time for all hours in excess of 40 for the investigative period of two years.

Mr. Scully agreed the administrative exemption did not apply to (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) and agreed to pay the employees the additional half-time for hours worked over 40 in the investigative period. At the meeting on January 4, 2013, Mr. Roos explained that based on their duties, he understood how the exemption would not apply.

Mr. Roos and Mr. Scully agreed to future compliance with the overtime requirements and said they will correct the violation by paying the two employees time and one-half for hours worked over 40 in the workweek.

The WHI explained the firm is in violation for not providing the required break time and a place, other

than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk.

Mr. Roos and Mr. Scully understood the violation and on January 4, 2013 escorted this WHI to a suitable location for nursing mothers to express breast milk. Mr. Roos agreed to provide the employees with the time necessary to express milk. The parties agreed to future compliance.

This WHI explained the firm is in violation of the record keeping requirements of the FLSA. The firm did not keep time records for non exempt employees and separate regular and overtime hours.

The parties understood the recordkeeping violation and will correct the violation by having the non exempt employees keep track of their time on a timesheet and separate regular and overtime hours for the employees if they exceed 40 hours in the workweek. The parties agreed to future compliance with the recordkeeping requirements of the FLSA.

This WHI explained no child labor violation was found and referred Mr. Scully to the child labor 101 regulation.

This WHI explained that FMLA is applicable to the firm as they employed 50 or more employees for 20 workweeks in the current or preceding calendar year. They also have eligible employees who have worked 1250 hours in the past 12 months. This WHI referred Mr. Scully to the FMLA regulation and told him to call if he had any questions.

This WHI also explained as a result of the FLSA violations, civil money penalties may be assessed (b) (7)(E)

A FS 44 and HRG with specific reference to SBREFA were given to Mr. Roos on December 10, 2012 at the initial conference.

At the final conference the following publications were giving to Mr. Scully: FLSA (WH-1318), Child Labor Regulation 101 (WH-1330), 778 (WH-1262), 516 (WH-1261), 541 (WH-1281), 785 (WH-1312), Part 825 (WH-1419), and FLSA posters (WH-1088).

A WH-56 was presented to Mr. Scully, who signed the WH-56 and received one a copy. The firm agreed to pay the back wages by January 11, 2013 and have final proof of payment to the Louisville District Office by February 25, 2013. WH-58s and BCDS letter with detailed instructions on back wage payments and the deadline dates were explained to Mr. Scully who acknowledged he understood and initialed the BCDS letter and received a copy.

216(b) actions: At the initial conference Mr. Roos stated no civil action was file against the company regarding labor issues.

Recommendation:

It is recommended that the case is administratively closed (b) (7)(E)

CMP Person:

Thomas Gill, President,
Fetter Printing Company
d/b/a Fetter Group
700 Locust Lane
Louisville, KY 40217

(b) (6), (b) (7)(C)

Wage and Hour Investigator
01/15/2013

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1677676 Originating District: Raleigh NC District Office
Local Filing Number: 2013-291-01485 Investigating District: Raleigh NC District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 12/03/2012
Assignment Date: 12/03/2012

Employer Information

Trade Name: Carolina Medical Center

Address: 1000 Blythe Blvd

Charlotte, NC 28203

Legal Name: Charlotte Mecklenburg Hospital Authority

EIN: 56-0529945

County: Mecklenburg

NAICS Code: 622110

No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 08/01/2012

To: 01/26/2013

Investigation Type: (b) (7)(E)

Investigation Tool: Full Investigation

Compliance Status: Agree to Comply

BNPI:

Reinvestigation: ☐

Recurring Violation: ☐

Future Compliance Agreed: ☐

Involved in AG: ☐

Recommended Action:

BWFS: ☐

CMP: ☐

Litigation: ☐

Civil Action: ☐

Criminal Action: ☐

Submit For Opinion: ☐

RO/NO Review: ☐

Follow Up Investigation: ☐

Other Action: ☐

Denial of Future Certificate: ☒

BW Payment Deadline:

Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

FMLA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FMLA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

*38.25 HRs, (b) (7)(E) unable to express milk as often as needed, (b) (7)(E) became ill and may have been dismissed due to number of absences, ER ATR, ATC, C paid for all breaks, Rec. Admin. Closing (b) (7)(E)

20, 21, 22, 23, 28, 28-D, 44, 77A, CL Non Ag, HRG, 1330, 778, 785, 516, 541

WHI Signature: _____ Date: 02/28/2013

Reviewed By: _____ Date: _____

**Charlotte Mecklenburg Hospital Authority
dba Carolina Medical Center
Case ID: 1677676**

**Carolina Medical Center
1000 Blythe Boulevard
Charlotte, N.C. 28203**

Telephone-704-355-2000

**Contact
Maggie Fishell, Esq.
Human Resources Representative
1000 Blythe Boulevard
Charlotte, N.C. 28203**

Telephone: 704-631-0138

**Outside Counsel
Molly Shah, Esq.
Littler Mendelson, P.C.
100 North Tryon Street
Charlotte, N.C. 28202**

**Telephone: 704-972-7008
Facsimile: 980-322-3236**

Federal Tax ID#: 560529945

FLSA NARRATIVE

CASE ASSIGNMENT INFORMATION: This case was initiated by (b) (7)(E) (b) (6), (b) (7)(C) (b) (7)(E) (b) (6), (b) (7)(C) was unable express breast milk as often as needed. (b) (6), (b) (7)(E) this made (k)(4) ill and (b) (6), (b) (7)(E) missed several days of work which could cause (b) (6), (b) (7)(E) to be terminated. (b) (6), (b) (7)(E) also (b) (7)(E) retaliation by the hospital staff due (b) (6), (b) (7)(E) need to express breast milk.

SCOPE: This was a limited investigation of the firm's Labor and Delivery Unit at their Blythe Road location under the minimum wage, overtime, record keeping and child labor and Nursing Mother Provision provisions of the Fair Labor Standards Act.

PERIOD OF INVESTIGATION: August 1, 2012 through January 26, 2013.

MODO: The firm operates hospitals, urgent care centers, imaging centers, pharmacies and physician's offices throughout North and South Carolina. The corporate office is located in Charlotte, North Carolina and the NCDO is the MODO.

HISTORY: There is recent investigative history for this firm.

Case ID: 1661296, (b) (7)(E) wrongful termination under FMLA. (b) (7)(E) and \$10,000 was awarded in back wages and (b) (6), (b) (7)(C) was reinstated.

(Exhibit D-2).

COVERAGE

The firm is a medical center with numerous locations in North and South Carolina. The firm is a not for profit hospital authority that began in 1940. The main campus is located on Blythe Road in Charlotte, North Carolina. The firm provides medical services including imaging, cancer treatment and research, hospitalization, urgent care, physician's offices and pharmacies.

The firm stipulated to coverage under the FLSA during the investigation and ADV was not disclosed. Maggie Fishell, Human Resources Representative, represented the firm during the investigation and had the authority to bind the firm on matters of significance. Thus, the firm is a 3d employer.

As such, all employees were covered for the entire period of the investigation (Exhibit C-1-C-).

No Section 16(b) actions are pending (Exhibit C-1-C-2).

INDIVIDUAL COVERAGE:

Being enterprise coverage has been established, individual coverage was not pursued.

EXEMPTIONS

Due to the limited nature of the investigation, no 13, (a), (1) exemptions were not explored during the course of the investigation.

The undersigned did interview the Nurse Manager during the initial conference as part of fact finding around (b) (6), (b) (7)(C) work history and allegations as part of the investigation. The Nurse Manager had supervisory and scheduling authority over more than 40 full time employees and it was (b) (6), (b) (7)(C) primary duty to manage the surgical support team and handle the day to day operations of the Labor and Delivery Unit.

STATUS OF COMPLIANCE

(b) (7)(E) Data: Results: (b) (6), (b) (7)(C) (b) (7)(E) (b) (6), (b) (7)(C) to provide (b) (6), (b) (7)(C) with the results of the investigation. The undersigned has contacted (b) (6), (b) (7)(C) to provide (b) (6), (b) (7)(C) with the results of the investigation.

PAY PRACTICE: The firm pays its employees bi-weekly on Fridays with a check or direct deposit. Deductions for taxes and benefits are taken from these paychecks. The employees wear uniforms; however, they purchase these uniforms on their own and no uniform deductions are taken from their paychecks.

The firm's work week is Sunday through Saturday and all non-exempt employees record their time on a time clock.

Employees in (b) (6), (b) (7)(C) area receive 30 minutes for lunch and a paid 15 minute break when possible. If they work through lunch they are compensated. All non-exempt employees are paid well above the federal minimum wage of \$7.25 an hour and are paid time and one half when they work more than 40 hours a week.

Only payroll records for (b) (6), (b) (7)(C) department were reviewed in conjunction with this (b) (7)(E)

Nursing Mothers: The firm accommodates nursing mothers at numerous lactation rooms are set up around the hospital campus to accommodate this practice.

(b) (6), (b) (7)(C) is a surgical technician who duties include ensuring that surgical supplies are sterilized, accurately counted and handed to the surgeons when needed. When a technician leaves during a case the case is put on hold while a new technician takes over and inventories supplies. (b) (6), (b) (7)(C) works two twelve hour shifts each week.

In the case of (b) (6), (b) (7)(C) was not able to express milk as often as needed during (b) (6), (b) (7)(C) first few months at the hospital due to their being short staffed as well as management not being aware of (b) (6), (b) (7)(C) need to perform this practice when (b) (6), (b) (7)(C) first began working.

(b) (6), (b) (7)(C) was informally counseled several times on informing (b) (6), (b) (7)(C) collages when (b) (6), (b) (7)(C) left to express milk to ensure that patients were not left unattended during this time to ensure patient safety.

The breaks (b) (6), (b) (7)(C) took to express breast milk usually lasted between 15-20 minutes from the time (b) (6), (b) (7)(C) left to the time (b) (6), (b) (7)(C) returned to the floor. (b) (6), (b) (7)(C) was required to clock in and out for these breaks. (b) (6), (b) (7)(C) is paid (b) (6), (b) (7)(C) an hour and was paid for all (b) (6), (b) (7)(C) breaks taken while expressing (b) (6), (b) (7)(C) breast milk.

A lactation room was designed for (b) (6), (b) (7)(C) use; however, (b) (6), (b) (7)(C) only used it once since it was on another floor. (b) (6), (b) (7)(C) mainly used a "spa room" on (b) (6), (b) (7)(C) floor that was equipped with a chair, mood lighting, a refrigerator and an occupied sign on the door. (b) (6), (b) (7)(C) also used empty patient rooms in (b) (6), (b) (7)(C) area as needed.

(b) (6), (b) (7)(C) is now able to express (b) (6), (b) (7)(C) breast milk when needed and often as needed. The firm has requested that (b) (6), (b) (7)(C) schedule the necessary breaks to express breast milk as needed before and after surgery and adjusted (b) (6), (b) (7)(C) duties and surgery schedule as needed to accommodate this practice. They have requested that the contact the Floor Supervisor before leaving to express (b) (6), (b) (7)(C) breast milk.

Most surgeries are two hours but some are four and five. Most surgeries are scheduled ahead of time; however, some surgeries are performed on an emergency basis. (b) (6), (b) (7)(C) is now the second or third technician on the surgical call list each day and is given other duties to perform in the area as needed that are also part of (b) (6), (b) (7)(C) job description.

(b) (6), (b) (7)(C) also (b) (7)(E) (b) (6), (b) (7)(C) had become ill because (b) (6), (b) (7)(C) was unable to express (b) (6), (b) (7)(C) milk as needed. The firm has a policy that in an employee's first 90 days of employment if they have three occurrences they are terminated regardless of the reason behind the occurrences. After the first 90 days medical leave is allowed and occurrences drop off an employee's record on a rolling calendar basis.

(b) (6), (b) (7)(C) has two occurrences on (b) (6), (b) (7)(C) record-one October 3, 2012 and the other October 29-30, 2012. The first occurrence was allegedly when (b) (6), (b) (7)(C) became ill when (b) (6), (b) (7)(C) was unable to express (b) (6), (b) (7)(C) breast milk as often as needed.

When (b) (6), (b) (7)(C) supervisor met with (b) (6), (b) (7)(C) to discuss this issue of the occurrences on December 4, 2013 to issue the final warning (b) (6), (b) (7)(C) indicated that (b) (6), (b) (7)(C) had been ill once due to not being able to express (b) (6), (b) (7)(C) breast milk every two-hours. (b) (6), (b) (7)(C) 90 day anniversary was December 24, 2012 and medical leave is now available should (b) (6), (b) (7)(C) need it for any reason.

(Exhibits A-0-1, B-1, C-1-C-3, D-4-D-8).

VIOLATIONS: A violation was found under section seven of the FLSA-M. No violations were found under the minimum wage, records keeping, overtime and child labor provisions of the FLSA.

SECTION 6: MINIMUM WAGE: A minimum wage violation was not determined for the following reason.
All non-exempt employees in the firm's Labor and Delivery Unit are paid well above the federal minimum wage of \$7.25 an hour.

SECTION 7: OVERTIME: An overtime violation was not determined for the following reason.
All non-exempt employees in the firm's Labor and Delivery Unit are paid time and one half their hourly rate when they work more than 40 hours in a work week.

SECTION 7: NURSING MOTHERS: A violation was determined for the following reason.
The firm did not allow (b) (6), (b) (7)(C) to express (b) (6), (b) (7)(C) breast milk as often as needed during the first few months of (b) (6), (b) (7)(C) employment.

SECTION 11: RECORD KEEPING: A record keeping violation was not determined for the following reason:
1) All the non-exempt employees in the firm's Labor and Delivery Unit had their hours recorded correctly.

SECTION 12: CHILD LABOR: A violation was not determined for the following reasons:
The firm does not employ minors.

OTHER LAWS: FMLA- The firm is a covered employer under the FMLA and their policy is in compliance.

(Exhibits A-0-1, B-1-B-8, D-3-D-9)

DISPOSITION

(b) (7)(E)
It was assigned to undersigned on December 11, 2012 due to scheduling when it was initially determined (b) (6), (b) (7)(C) position and health may have been in jeopardy.

The undersigned contacted (b) (6), (b) (7)(C) was concerned that (b) (6), (b) (7)(C) may terminated for expressing (b) (6), (b) (7)(C) breast milk. The undersigned then contacted the firm's Human Resources Department to discuss the matter and schedule

the initial conference. The firm retained Outside Counsel who requested an extension until after the holidays due to the leave status of the Human Resources Representative who was assisting Counsel with preparing the firm's response.

The undersigned requested that the firm allow (b) (6), (b) (7)(C) to express (b) (6), (b) (7)(C) breast milk as needed and that the firm not take any additional adverse action against the employee until the matter was resolved. Counsel indicated they would consider the undersigned's request.

The undersigned requested that (b) (6), (b) (7)(C) comply with all the firm's requests regarding informing the appropriate individuals when (b) (6), (b) (7)(C) was leaving the floor to express (b) (6), (b) (7)(C) breast milk to ensure patient safety. (b) (6), (b) (7)(C) then told the undersigned that (b) (6), (b) (7)(C) was able to express milk as often as needed and that the firm had adjusted (b) (6), (b) (7)(C) work duties and surgical schedule to accommodate (b) (6), (b) (7)(C) needs.

(b) (6), (b) (7)(C) also said that (b) (6), (b) (7)(C) 90 day probationary period would be up in a few days and then (b) (6), (b) (7)(C) would have leave if (b) (6), (b) (7)(C) was unable to work and so (b) (6), (b) (7)(C) felt as though (b) (6), (b) (7)(C) position was no longer in jeopardy. (b) (6), (b) (7)(C) was able to provide the undersigned with a note regarding (b) (6), (b) (7)(C) illness; however, the note did not indicate the date of (b) (6), (b) (7)(C) illness.

The undersigned then granted the firm's request for an extension. The initial conference was held on January 10, 2013 and included a review of the position statement and an interview of the Nurse Manager in the firm's Labor and Delivery Unit.

The firm did not produce a profile work week in the appropriate as requested by the undersigned during the time of the initial conference. They officially objected to that and several other standard requests as a matter of record; however, most of these items were provided to the undersigned and the investigation proceeded.

The undersigned then determined that the firm had not allowed (b) (6), (b) (7)(C) to express (b) (6), (b) (7)(C) breast milk as often as needed due to both staffing and communication issues.

However, the undersigned did not feel that the firm had retaliated against (b) (6), (b) (7)(C) for exercising (b) (6), (b) (7)(C) rights under the Act for the following reasons: The firm felt that (b) (6), (b) (7)(C) actions may have jeopardized patient safety when (b) (6), (b) (7)(C) left patients unattended and this a valid reason for counseling.

(b) (6), (b) (7)(C) informed the Nurse Manager that (b) (6), (b) (7)(C) was able to determine when patients could be left unattended without jeopardizing their safety. The Nurse Manager indicated the only a Physician or Nurse could make that determination.

The firm also has a neutral attendance policy that allows for termination of any employee who obtains three occurrences within their 90 day probationary period. It should also be noted that the firm hired (b) (6), (b) (7)(C) knowing that (b) (6), (b) (7)(C) may need to express breast milk during (b) (6), (b) (7)(C) tenure and also gave (b) (6), (b) (7)(C) the benefit of the doubt when (b) (6), (b) (7)(C) left work early one day due to illness and did not count this as an occurrence.

The undersigned then contacted Counsel to discuss (b) (6), (b) (7)(C) FLSAM findings on January 28, 2013 and obtain the profile work week. The undersigned informed Counsel that the firm had been charged with a violation under section 7 of the FLSA. The situation had already been remedied and the undersigned recommended that firm remove the two occurrences from the undersigned's record. She also requested future compliance.

Counsel prepared a response that included the profile work week. The firm did not agree with the violation and therefore did not remove the occurrences from (b) (6), (b) (7)(C) record. They agreed to future/continuing compliance.

The undersigned held the final conference via telephone on February The undersigned also counseled (b) (6), (b) (7)(C) on following the firms instructions regarding patient safety and notifying the appropriate individuals when (b) (6), (b) (7)(C) needs to leave the floor to express breast milk.

(A-1-O, B-1, C-1-C-3, D-4-D-9).

CIVIL MONEY PENALTIES (CMP's) –Non-applicable due to the non-monetary violations in the case.

RECOMMENDATION: The file can be administratively closed (b) (7)(E)

PUBLICATIONS: Facts Sheets 20, 21, 22, 23, 28-D, 44, 77A, CL Non-Ag, HRG, Pubs-516, 541, 778, 785, 1330.

Correspondence sent to:

Maggie Fishell, Esq.
Human Resources Representative
Carolina Medical Center
1000 Blythe Road
Charlotte, N.C. 28203

(b) (6), (b) (7)(C)

Carolina Medical Center Case ID: 1677676

Investigator, Wage and Hour Division

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1679400 Originating District: Raleigh NC District Office
Local Filing Number: 2013-291-01534 Investigating District: Raleigh NC District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 12/19/2012
Assignment Date: 12/19/2012

Employer Information

Trade Name: Outback Steak House

Legal Name: Blooming Brand, Inc

Address: 979 Soldier Drive

EIN: 65-0201445

County: Iredell

NAICS Code: 722110

Statesville, NC28677

No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 11/17/2012

BNPI:

To: 11/20/2012

Reinvestigation: ☐

Investigation Type: (b) (7)(E)

Recurring Violation: ☐

Investigation Tool: Self Audit

Future Compliance Agreed: ☒

Compliance Status: Agree to Comply

Involved in AG: ☐

Recommended Action:

BWFS: ☐

RO/NO Review: ☐

CMP: ☐

Follow Up Investigation: ☐

Litigation: ☐

Other Action: ☐

Civil Action: ☐

Denial of Future Certificate: ☐

Criminal Action: ☐

BW Payment Deadline:

Submit For Opinion: ☐

Trailer forms attached: ☐

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found: 0

Unduplicated Employees Agreed: 0

Total Amount BWs Computed: \$0.00

Total Amount BWs Agreed: \$0.00

Total Amount LDs Computed: \$0.00

Total Amount LDs Agreed: \$0.00

WHISARD Compliance Action Report

Conclusions & Recommendations:

(b) (6), (b) (7)(E) manager told (b) (6), (b) (7)(C) not to express milk in the premises, and (b) (6), (b) (7)(C) had to go home to express milk. ER told WHI that (b) (6), (b) (7)(C) told (b) (6), (b) (7)(C) to use bathroom, but (b) (6), (b) (7)(C) decided to go to (b) (6), (b) (7)(C) home to express milk and did not returned because (b) (6), (b) (7)(C) had no money for gas. WHI informed ER about the requirements under the Act, and ER assured to stay in future compliance. FS# 73 provided to ER. No further action taken as (b) (6), (b) (7)(C) was employed for 2 days and does not want to work for employer.

WHI Signature: _____ Date: 01/08/2013

Reviewed By: _____ Date: _____

FLSA NARRATIVE REPORT

Outback Steak House
979 Soldier Drive
Statesville, NC 28677
(704) 832-1818

FEIN: 65-0201445
Case ID: 1679400

COVERAGE

Nature of Business: Subject firm is engaged in the business of managing one Outback Steak House Restaurant located at 979 Soldier Drive Statesville, NC 28677. The legal name of the company is Blooming Brand, Inc and its own by Craig Just (See Exhibit C-1).

3(s)1(A)(i)&(ii): The ADV for the entire corporation for each of the last two years was over \$500,000 thousand dollars. This firm employs approximately (b) (4) employees at the restaurant. The employer has two or more employees engaged in interstate commerce as defined under section 3(s)(1)(A) of the FLSA. The annual dollar volume for the last two years was in excess of \$500,000 thousand dollars each year. Enterprise Coverage is asserted under 3(s)(1)(A) for the entire investigative period (See Exhibit C-1).

FLSNM: Employer had more than 50 employees at the establishment, and the complainant was a non-exempt employee of the firm and as a direct result the employer was subject to the FLSA break time for nursing mother's requirement.

Period of investigation: November 17, 2012 through November 21, 2012.

MODO: Raleigh District Office

History: None

EXEMPTIONS

Mr. Craig Just is involved in the daily operations of the business. He hired and fired employees, directed their work, and otherwise acted in the direct interest of the corporate entity in relation to the employees. Therefore, he is the Section 3(d) employer under the Act.

No exemptions challenged by WHI.

STATUS OF COMPLIANCE

Pay Practices: The employer workweek runs Monday to Sunday with paydays on Fridays on a weekly pay period. Employer recorded all employees hours worked at the time clock. Waiters and Bartenders receive (b) (4) per plus tips. Employees are paid via check.

Reason for investigation: This investigation was initiated by (b) (7)(E) (b) (6), (b) (7)(C) (b) (7)(E) while working for the company (b) (6), (b) (7)(C) manager told (b) (6), (b) (7)(C) not to express milk in the premises, and was told to go home to express breast milk. (b) (7)(E).

Section 6: No minimum violations found during the investigative period.

Section 7: A Break time for Nursing Mothers violation under Section 7 of the FLSA was found during the investigative period when the employer failed to provide adequate space for a nursing mother to express breast milk. (b) (6), (b) (7)(C) requested permission to use the manager's office to express milk, but was told to use the employee's bathroom, which at the time (b) (6), (b) (7)(C) decided that it was better for (b) (6), (b) (7)(C) to go home to express milk. (b) (6), (b) (7)(C) was employed by the restaurant for two full days between 11/17/2012 to 11/20/12 and decided not to continue (b) (6), (b) (7)(C) employment at the restaurant. WHI informed (b) (6), (b) (7)(C) employer about the requirements under the Act in regards to Break Time for Nursing Mother under the FLSA. No further Action was taken as (b) (6), (b) (7)(C) did not want to work for the employer in the future.

Section 11: No record keeping violations found during the investigative period.

Section 12: Child Labor violations not found during the investigative period. No minors employed by the company during investigative period.

DISPOSITION

WHI (b) (6), (b) (7)(C) held a final conference on 1/4/2012 with the company's owner Mr. Craig Just. The investigator explained the applicable provisions of the Act including hours worked provisions, minimum wage and overtime provisions, and record keeping standards and child labor provisions.

WHI informed to Mr. Just about the requirements under the Act in regards to Break Time for Nursing Mother requirements under Section 7 of the FLSA and provided him with Fact Sheet # 73. Mr. Just explained to WHI that he understands that he made a mistake by telling (b) (6), (b) (7)(C) to use the employee's bathroom, and he assured to WHI that in the future he will make his office available to any female employee in need to express breast milk while in the premises. Mr. Just told WHI that his office is a space shielded from view and free from intrusion from coworkers and the public.

(b) (6), (b) (7)(C) **Notification:** On 1/4/2012 WHI called (b) (6), (b) (7)(C) and informed (b) (6), (b) (7)(C) about the investigative results.

Publications Provided: HRG, and FS # 73.

Recommendation: Employer agreed to stay in future compliance. WHI (b) (6), (b) (7)(C) recommends that this file be administratively closed (b) (7)(E)

All correspondence should be sent to:

Mr. Craig Just
Outback Steak House
979 Soldier Drive
Statesville, NC 28677
(704) 832-1818

(b) (6), (b) (7)(C)
Wage & Hour Investigator
1/8/2012

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1694887 Originating District: Manchester NH District Office
Local Filing Number: 2013-245-00313 Investigating District: Manchester NH District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 05/16/2013
Assignment Date: 05/16/2013

Employer Information

Trade Name: Fastenal Legal Name: Fastenal Company
Address: 658 Exchange St. EIN: 41-0948415
County: Addison
NAICS Code: 424990
Middlebury, VT05753 No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 05/13/2013 BNPI:
To: 05/16/2013 Reinvestigation: ☒
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: (b) (7)(E) Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

WHISARD Compliance Action Report

Conclusions & Recommendations:

FLSNM (b) (7)(E) (b) (6) (b) (7)(E) ER refused to provide sufficient break periods. ER was a hardware (nuts, screws, etc.) distributor (retail/wholesale) based in MN. FLSA Ent. Cov. (b) (4) ees/nationwide locs.). (b) (6) returned from maternity leave. ER (Reynee Wisecup Corp. VP-HR) agreed to provide 3 break periods (b) (6) only ee based in the store). (b) (6) agreed/notif. (issue resolved). ER ATC: (b) (7)(E) (first request for such breaks per ER). Rec. Adm. Close (b) (7)(E). Hrs. = 3.5

WHI Signature: _____ Date: 05/23/2013

Reviewed By: _____ Date: _____

Fastenal Case ID: 1694887

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1700113 Originating District: Jackson MS District Office
Local Filing Number: 2013-208-00812 Investigating District: Jackson MS District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 07/03/2013
Assignment Date: 07/03/2013

Employer Information

Trade Name: The Kroc Center
Address: 575 Division Street

Biloxi, MS39533

Legal Name: The Salvation Army
EIN: 58-0660607
County: Harrison
NAICS Code: 813410
No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 09/18/2011 BNPI:
To: 07/14/2013 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Full Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

WHISARD Compliance Action Report

Conclusions & Recommendations:

(23.25 hrs) 3(s)(1)(A) cov.ER w/ 50 EEs; adequate space for NM viols; (b) (6), (b) (7)(C)
(b) (7)(E) re ER's failure to offer adequate space, other than a bathrm, for expressing breast milk. (b) (7)(E)
FC held at est on 07/26/13 with HRM Wanda Lowe, Dir of Ops Erin Darche, & Div. HRD Gina Oubre; FC
assured; space provide with privacy screen and door lock; ^(b) adv. by VM; Pubs: HRG, Pts 516, 541, 778, 785, WH-
1325 & 1330; FMLA FSs and forms. MODO - ATL DO. Rec. adm. close.

WHI Signature: _____ Date: 07/26/2013

Reviewed By: _____ Date: _____

FLSANM NARRATIVE

The Salvation Army
Ray and Joan Kroc Corps Community Center (aka The Kroc Center)
575 Division Street
Biloxi, MS 39530
Telephone: (228) 374-9100
EIN: 58-0660607
Case ID#: 1700113

COVERAGE

The subject firm is a community church, recreational, and social services facility. The facility offers a variety of athletic and recreational activities for youth and adults, music training and workshops, and includes a performance and visual arts theatre. The 52,000 SF facility includes an aquatics center, gymnasium, fitness center, dance and aerobics studio, and an outdoor track. The Kroc Center offers a variety of spaces for rent, and there are four types of memberships: youth, adult, senior, and family. Guest day passes are also available. The facility opened for business on 09/17/2011. (Ex. C-1, C-3 through C-6)

The home office for the subject firm is the Southern District Territorial office in Atlanta, GA. The Division office is in Jackson, MS, and includes facilities in Mississippi, Alabama, and Louisiana. The area office is the Mississippi Gulf Coast office, 2019 22nd Street, Gulfport, MS 39501, and includes facilities in the lower six counties in Mississippi. The Area Commander is Major Gary Sturdivant. The point of contact at the local facility is Ms. Erin Darche, director of operations, and Wanda Lowe, human resources manager. There are numerous branches of The Salvation Army worldwide, and 23 Kroc Centers throughout the United States. The subject facility employs 81 workers. (Ex. C-1)

3(d) Employer: Director of Operations Erin Darche and Area Commander Major Gary Sturdivant meet the definition of a 3(d) employer. They manage the facility, make financial

decisions, employment decisions, and are responsible for the day-to-day business decisions. (Ex. C-1)

The subject firm receives a variety of supplies from Sun Coast Business Supply out of Gulfport, MS. Sun Coast is a local distributor of over 100,000 items from various businesses throughout the United States. All employees handle goods that have moved in commerce.

The subject firm's annual dollar volume (ADV) for 2011 was (b) (4), and in 2012, it was (b) (4) (Ex. C-1)

The subject firm is a covered enterprise under Section 3(s)(1)(A) of the Fair Labor Standards Act (FLSA) since their ADV is over \$500,000, and it has employees handling goods that have moved in commerce. In addition, since the facility employs 50 or more employees, the employer must comply with the break time for nursing mothers provisions under Section 7(r) of the Act. (Ex. C-1)

Family and Medical Leave Act (FMLA): The subject firm employed over 50 workers during 20 workweeks in 2012 and 2013 and is a covered employer under the FMLA. A policy review was conducted, and the employer's general notification was found to meet the requirements of the FMLA. (Ex. D-3)

Period of Investigation: 09/18/2011 to 07/14/2013

MODO: MODO contact was made with the Atlanta District Office on 07/11/2013. (b) (7)(E) (Ex. D-1)

EXEMPTIONS

There were no exemptions from the break time for nursing mothers requirements of the FLSA found during this investigation. The firm employed more than 50 workers, and the affected employee was a non-exempt, hourly employee. (Ex. B-1 and C-1)

STATUS OF COMPLIANCE

Reason for Investigation: This full investigation was based on (b) (7)(E) and addressed compliance with the break time for nursing mothers requirement under Section 7(r) of the FLSA.

(b) (7)(E) Data: (b) (6), (b) (7)(C)
(b) (7)(E) the employer failed to provide a place, other than a bathroom, to express breast milk. (b) (7)(E)
(Ex. B-1)

History: There is no prior history of violations pertaining to the Ray and Joan Kroc Corps Community Centers. However, a history search under The Salvation Army found numerous case actions under other Acts, and one case action under the FLSANM.

- I. Case ID# 167778: The Salvation Army, Plainwell, MI; investigation period 08/06/2012 to 10/31/2012; violations included failure to provide reasonable break time and failure to provide adequate space. The final conference was held on 02/08/2013 with representatives of the local establishment and the Midwest Territory office. (Ex. D-2)

Section 7(r): The employer failed to provide adequate space for an employee to express breast milk for (b) (6), (b) (7)(C) nursing child who was under the age of one. Failure to provide adequate space is a violation of Section 7(r) of the FLSA. (b) (6), (b) (7)(C) child was born (b) (6), (b) (7)(C), and (b) (6), (b) (7)(C) began (b) (6), (b) (7)(C) employment with the subject firm (b) (6), (b) (7)(C). The employer designated the family locker room as the space for the employee to express breast milk. While the family locker room shielded the employee from view and was free from intrusion from coworkers and the public, it did not meet the definition of adequate space because it was a bathroom.

Section 12, Child Labor: There was no indication of child labor violations. The subject firm does employ minors aged 16 and 17 who work as lifeguards in the aquatic center. Dates of birth are verified. (Ex. C-1)

FMLA: The employer displayed the FMLA poster as required. A policy review was conducted, and the employer's general notice was found to be in compliance with the regulations. (Ex. D-3)

DISPOSITION

Disposition of (b) (7)(E). On 07/26/2013, a voice message was left on (b) (6), (b) (7)(C) telephone advising (b) (6), (b) (7)(C) of the results of the investigation.

Handy Reference Guide: A copy of the Handy Reference Guide was given to the human resources manager Wanda Lowe and the director of operations Erin Darche at the initial conference on 07/10/2013.

The final conference was held at the establishment on 07/26/2013. Representing the employer were Human Resources Manager Wanda Lowe, Director of Operations Eric Darche, and Divisional Human Resources Director Gina Oubre. WHI (b) (6), (b) (7)(C) represented the Agency.

Coverage and exemptions were discussed, and the violation was explained. Ms. Oubre stated that the employee was initially given two choices for a space to express breast milk. The employee chose the classroom which was free from intrusion since the door could be locked. The employee sat in the far corner of the room with very little visibility from the corridor. The employer did not realize that the glass door and window needed to be covered to completely shield the employee from view.

The employer assured future compliance. The employer has temporarily placed curtains over the windows and has ordered a three-panel privacy screen that will be used once received. This screen can be placed around the employee for complete privacy. (Ex. C-69)

FMLA: Compliance under the Family and Medical Leave Act was discussed with the employer, and a copy of Fact Sheet 28D was provided. A copy of Regulations Part 825 was ordered online on 07/26/2013 to be mailed directly to the employer. (Ex. E-1)

The employer was advised of the possibility of civil money penalty assessment resulting from this violation and/or future violations. The employer was also advised that employees have a private right of action under Section 16(b) of the FLSA.

The employer is not a party to any private litigation under Section 16(b) or any pending litigation, nor is the employer in bankruptcy at this time.

Publications: Handy Reference Guide; FLSA poster; EPPA Poster; Regulations Part 516, Part 541, Part 778, and Part 785; WH-1325 and WH-1330; Fact Sheets #16, 17A, 21, 22, 23, 43, and 73; FMLA poster; FMLA Fact Sheets 28, 28A, 28B, 28C, and 28D; FMLA Forms WH-380-E, WH-380-F, WH-381, WH-382, WH-384, WH-385, and WH-385-V; Section 7(r) of the FLSA.

RECOMMENDATIONS

MODO: (b) (7)(E) [REDACTED], and a copy of the narrative has been posted in WHISARD.

I recommend this file be administratively closed.

(b) (6), (b) (7)(C) [REDACTED], WHI

Date

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1701055 Originating District: Atlanta GA District Office
Local Filing Number: 2013-111-24019 Investigating District: Atlanta GA District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 07/16/2013
Assignment Date: 07/16/2013

Employer Information

Trade Name: Uberprints Legal Name: Uberprints, Inc
Address: 115 Ruth Dr. EIN: 58-2590961
County: Clarke
NAICS Code: 453998
Athens, GA30601 No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 07/26/2011 BNPI:
To: 07/25/2013 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Full Investigation Future Compliance Agreed: ☐
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: 09/15/2013
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSA Totals:	21	21	\$7,112.46	\$7,112.46	\$0.00	\$0.00	
Total Violations Under FLSA:		22					\$0.00

WHISARD Compliance Action Report

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

FMLA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FMLA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	21	Unduplicated Employees Agreed:	21
Total Amount BWs Computed:	\$7,112.46	Total Amount BWs Agreed:	\$7,112.46
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

30.50 HRS, Enterprise Coverage, OT and RK violations due to misspallied exemption and OT Paid after 80 hrs. ER ATC/ATP RTC/RTP backwages to 21 EE's totaling \$ 7112.46. recommend file be close (b) (7)(E)

WHI Signature: _____ Date: 08/30/2013

Reviewed By: _____ Date: _____

Uberprints Case ID: 1701055

**Uberprints Inc.
DBA Uberprints
115 Ruth Drive
Athens GA 30601
Phone: (866) 440-8237
Tax ID# 58-2590961
File # 1701055**

FAIR LABOR STANDARDS ACT OF 1938 (FLSA) NARRATIVE REPORT

COVERAGE:

Business Structure:

The subject establishment provides custom t-shirts, sweatshirts, polos, hats and other apparel through its website www.uberprints.com. The company operates as a corporation in Athens, Georgia. It was incorporated in the state of Georgia on 1/26/2001. The company has three establishment and 60 employees. The company main office is located at the above address and has (b) (4) employees. There have another office at 3665 Piedmond Rd. NE, Bldg 3, suite130, Atlanta GA 30305 with 5 employees and a production facility with 30 workers located at 240 Collins Industrial Blvd, Athens, GA 30601.

The ADVs for this enterprise are as follows:

--CY2010 - (b) (4)
--CY2011 - (b) (4)
--CY2012 - (b) (4)

The Company is owned by Mr. John Impeduglia and Mr. Jonathan Howard. Each has a (b) (4) ownership in the company. All the employees are covered on Enterprise basis for the entire investigative period because the enterprise exceeds the criteria required under the Act of a \$500,000 Annual Dollar Volume (ADV) and have at least two full-time employees engaged in commerce or in the production of goods for commerce. The company also has at least two employees that handle, sell or otherwise work on goods or materials that have been moved in or produced for commerce. [See Exhibit(s) C-1, 2, 3, 4]

Individual Coverage

The customer service department employees make phone calls and sent electronic mail to customers all over the United State. The productions workers are producing custom apparel that is shipped to states outside of Georgia. These employees are handling, working and selling goods that were produced for commerce, i.e. Dell and HP computers, Brothers printers and heat presses, t-shirts and hats manufactured

outside the state of Georgia. [See B Exhibits]

Section 3(D) Employer:

Mr. John Impeduglia and Mr. Jonathan Howard are the owners actively involved in the company daily operations; they are there every day, they are on the company payroll and run the business operations. They make payroll policy decisions, sign payroll checks and make decisions regarding financial matters. [See Exhibit C-1-c]

MODO Instructions:

This is a Multi-Unit Employer (MUER) and the Georgia DO is the MODO. (b) (7)(E)
[See exhibit D-0]

Investigative Period:

The investigation was for the period from the 7/26/11 to 7/25/13.

Limits:

This was a full investigation of the establishment.

EXEMPTIONS: Applicable

Mr. Impeduglia and Mr. Howard the owners of the company and meet the requirements for exemption under Regulation §541.101, with over 20% equity interest in the Enterprise.

<u>Name</u>	<u>Title</u>	<u>Bi Weekly Salary</u>	<u>Exemptions Tested</u>	<u>Exhibit</u>
(b) (6), (b) (7)(C)	Director of Oper.	(b) (6), (b) (7)(C) 541.100	B-6	
	Cust. Ser. Manager	541.100	B-7	
	Art Dept. Manager	541.100	B-8	

The Executive Exemption of Regulation 541.100 was determined to be applicable to the above individuals. They are paid in excess of \$455.00 per week on a salary basis. Their primary duties are management. They can hire and fire and or their recommendations with regards to change in employee's status are given a particular weight, manage and make sure EE's work is done. They supervise more than

2 full time EE's.

Not Applicable

<u>Name</u>	<u>Title</u>	<u>Bi Monthly Salary</u>	<u>Tested</u>	<u>Exhibit</u>
(b) (6), (b) (7)(C)	Production Artist	(b) (6), (b) (7)(C)	541.300	B-1
	screen Print Sup.	(b) (6), (b) (7)(C)	541.300	B-4
	Production Artist	(b) (6), (b) (7)(C)	541.300	B-5

(b) (6), (b) (7)(C) is not exempt because (b) (6), (b) (7)(C) is not compensated at least 4455.00 per week. [See exhibit A-0]

The Executive Exemption of Regulation 541.100 was determined to be not applicable to the above individual(s). (b) (6), (b) (7)(C) paid in excess of \$455.00, per week on a salary basis but do not supervise more than 2 full time EE's.

The Administrative Exemption of Regulation 541.200 was determined to be not applicable to the above individual(s). Their primary duty does not include the exercise of discretion and independent judgment with respect to matter of significance. Employees also indicated that their job is routine in nature. Their job is to cleanup art work submitted by customers in order to make it a good quality for printing.

The Art Department does not qualify for the professional exemption because, the learned professional exemption is restricted to professions where academic training specialized is a standard prerequisite for entrance into the profession. This exemption does not apply because most employees acquire their skill by experience rather than by advanced specialized intellectual instruction. Most of the work performed by these workers required the knowledge of software like Photoshop and illustrator software, knowledge which acquired by experience and not by advanced specialized intellectual instruction.

This employee's primary duty is not the performance of work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor. These employees' primary duty is to clean up or retouch pictures, art and graphics uploaded by customers on the company website when placing an order for printing on t-shirts or other apparel.

STATUS OF COMPLIANCE:

History: There is not history on WHISARD for this employer.

Investigation of the subject firm was initiated (b) (7)(E) . (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) a nursing mother (b) (7)(E) the employer did not provided adequate space for pumping, expressing milk.

(b) (6), (b) (7)(C) (b) (7)(E) the employer did not provide adequate space for nursing mothers. (b) (7)(E) (b) (6), (b) (7)(C) was also found to be non exempt and overtime violations resulted from the misclassification. Backwages for (b) (6), (b) (7)(C) totaled \$789.77. (b) (6), (b) (7)(C) has been notified of the results of the investigation.

Section 206 (Minimum Wage-MW): Total Backwages computed \$0.00

There were no minimum wage violations. All employees are paid at least \$7.25 per hour.

Section 207 (Overtime-OT): Total Backwages computed \$7,112.46 to 21 employees

There were several overtime violations. The company paid the art department on a salary basis. However some of them received less than \$455.00 per week. Most of these were non exempt employees that worked more than 40 hours per week with no overtime compensation. [See exhibit A-1-21]

The company paid overtime for hours after 80 for the most part and not after 40 in the workweek. There were some instances in which the company paid correctly. This was in part because the manager totaled the hours and might have not been aware of the workweek concept. , all overtime was paid in pay periods of more than 80 hours per week.

Section 2011 (Recordkeeping):

The ER failed to keep time records in accordance with Reg. 516. The company did not keep accurate hours for salary non exempt employees. Additionally, the company did not have time records for two months in the beginning of the investigative period. [See Exhibit(s) C-1, D-3]

Section 2012 (Child Labor): No violation(s) found. The company does not employ anyone less than 18 years of age.

Computation(s):

The establishment maintained a payroll. The workweek runs Sunday through Saturday. The company initially pays bi weekly. The employees fill in individual time sheets and they stated that the hours in it were correct. For the most part the workers stick to a 40 hours' workweek but occasionally work more than 40 hours per week.

This investigator after sampling the payroll instructed the employer to transcribe the hours from the time sheets and provide them to this investigator.

(b) (7)(E)

*The employer provided excel file had one column under amount due and the two workweeks hour in a single row. In other to save time recreating the excel sheet this investigator did the following. The rate entered in the WH55 is a combination of both rates that equates the total amount due for the two weeks period. However, the rate for each workweek was calculated separate to get total amount due for each workweek, prior to combining the rates so as the total amount due matches the combined rate.

(b) (7)(E)

FMLA: A copy of the employer's FMLA policy was reviewed. The employer was instructed to updated with the military provisions, fitness for duty and "son and daughter under ADA and provide the update policy to this investigator for inclusion in the MODO file.

DISPOSITION:

On 7/26/13 an initial conference was held with Mr. John Impeduglia, Owner, Mt. Gregg Garcia, Attorney, Mr. Ralph Cimperman, Payroll Company, represented the Company. This investigator represented the U. S. Dept. of Labor WHD, Atlanta District Office. The meeting was held at the establishment, which is located at 115 Ruth Dr., Athens GA 30601. This Investigator explained the purpose of the investigations and the process for completing the investigation.

On 8/29/2013 a final conference was held with Mr. John Impeduglia, Owner, and Mr. Gregg Garcia, Attorney, represented the Company. This investigator represented the U. S. Dept. of Labor WHD, Atlanta District Office. The meeting was held at the establishment, which is located at 115 Ruth Dr., Athens GA 30601.

Enterprise and Individual coverage, MW, OT, RK, Hours Worked, Child Labor, Employment Relationship, Independent Contractor and 541 exemptions were discussed in detail and instructions were given for future compliance.

Overtime

This investigator told the group that the investigation revealed overtime violations because it did not pay overtime for hours over forty in a workweek to the salaried non exempt EE's. These employees were the art department personnel. Mr. Impeduglia said that the company thought that by paying a salary to their employees, that they were professionally exempt. This investigator explained in detail exemptions and gave them copy of fact sheets and publication. Mr. Impeduglia stated that he understood and that they would limit the hours to less than 40 and paid them overtime if they exceed the 40 hours in the workweek. The workweek concept was also explained to them. Mr. Impeduglia agreed to comply in the future.

This investigator told the group that the investigations revealed overtime violations because it did not pay overtime for hours over forty in a workweek to hourly employees because instead the company paid

overtime after 80 hours, the pay period. Mr. Impeduglia said that he thought the company was paying correctly; that he does not see the time sheets and that the department managers are the ones that total employee's hours. Then the managers turn the totals over to him. This investigator explained in detail the workweek concept and told them that overtime is any time over 40 hours in a workweek. Mr. Impeduglia stated that he understood and agreed to comply in the future. He stated that he redesigned the time sheet and added a weekly total to it. He also said that he was going to educate the managers on the workweek concept.

Record Keeping

This investigator told the group that the investigation revealed record keeping violations because the company failed to record the total premium pay for overtime as he did not pay any overtime to employees that worked more than 40 hours per week. The company also did not have 3 month worth of time sheets. Mr. Impeduglia stated again that he misplaced the time sheet while moving into the building and he thought overtime was being paid properly. This investigator explained the record keeping requirements in detail. Mr. Impeduglia stated that he understood and agreed to comply in the future.

This investigator secured the signatures on the WH-56 and BCDS and provided the employer with the WH-58's and gave him instructions on how to pay the backwages and the submission of the necessary evidence to the DO. He will pay the current EE's directly and will forward the signed WH-58 to the AO office.

Recommendation(s):

(b) (7)(E)

Close case (b) (7)(E)

Publication(s):

The following publications were provided to and/or reviewed with the employer: *ESA Fact Sheets* # 21, 23, 44, PUB #541, 578, 579

Future correspondence should be sent to:

Gregory A. Garcia, Attorney

Uberprints Case ID: 1701055

**565 Research Dr.
Athens GA 30605
706-548-1128**

(b) (6), (b) (7)(C)

Investigator, Wage & Hour
8/29/13

**Uberprints Inc.
DBA Uberprints
115 Ruth Drive
Athens GA 30601
Phone: (866) 440-8237
Tax ID# 58-2590961
File # 1701055**

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1713550 Originating District: Miami FL District Office
Local Filing Number: 2014-249-16436 Investigating District: Miami FL District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 12/04/2013
Assignment Date: 01/13/2014

Employer Information

Trade Name: MAC Cosmetics Legal Name: M.A.C. Cosmetics, Inc
Address: 19501 Bisc Blvd EIN: 11-3581776
County:
Miami, FL 33180 NAICS Code: 446120
No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 03/01/2013 BNPI:
To: 06/07/2013 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

FMLA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FMLA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

Nursing Mother case, (b) (7)(E) MAC is subsidiary of Estee Lauder Co. First Invest. (b) (6), (b) (7)(C) , ER Atty , Catherine Ryan. No monetary viol found. ER has ATFC and now has implemented a Nursing Mth policy nationwide. (b) (7)(E) notified Rec admn Cls

WHI Signature: _____ Date: 02/26/2014

Reviewed By: _____ Date: _____

MAC Cosmetics Case ID: 1713550

Case Number: 2014-249-16436

MAC Cosmetics Inc
19501 Bisc Blvd
Miami, FL 33180

Corporate Office
MAC Cosmetics Inc
7 Corporate Center Dr
Melville, NY 11747-3166

EIN: 11-3581776

COVERAGE:

This investigation was initiated as the (b) (7)(E) and has been done as a **LIMITED** Investigation, limited only to **Nursing Mothers, under the Affordable Care Act, Section 7 of the FLSA,**

Subject firm is a Cosmetics company with branches all over the US and abroad with over (b) (4) employees nationwide. All employees of the establishment were covered on an enterprise basis under Section 3(s)(1)a for the entire investigative period. employees employed by this firm. The firm's ADV is in (b) (4). In addition, some employees were individually covered during the entire investigation period as they regularly ordered and received goods from other states such as NY, California and out of the country especially France. See Exhs. C1- C-5.

The corporation is a Division of Estee Lauder Cosmetics, corporate offices located at: The Estee Lauder Companies Inc, 767 Fifth Avenue, NYC, NY 10153. Firm is being represented by in house attorney, Catherine Ryan, phone: 212-277-2357.

The subject of this investigation is a MAC stand-alone store located inside Aventura Mall, Aventura, FL. This particular location has (b) (4) employees. In addition to this store there are another 2 additional MAC stores (counters) one inside Macy's with 7 employees and the other inside Bloomingdale's with (b) (4) employees.

NOTE: I have also opened a separate (b) (7)(E) file for Aventura Mall, x-ref: 2014-249-16632.

The period of investigation is from 03/01/2013 to 06/07/2013.

EXEMPTIONS:

There are no exemptions applicable to whom this investigation has been limited.

STATUS OF COMPLIANCE:

(b) (7)(E) DATA:

This investigation was initiated based on (b) (7)(E) (b) (6), (b) (7)(C) states in (b) (7)(E) that (b) (7)(C) worked for the MAC stand-alone store inside Aventura Mall (b) (6), (b) (7)(C) was pregnant and (b) (7)(C) baby was born (b) (6), (b) (7)(C) told (b) (6), (b) (7)(C) supervisor that (b) (6), (b) (7)(C) would be breast feeding. The supervisor told (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) would be able to use the Mall's bathroom. (b) (6), (b) (7)(C) told (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) would not be able to use the small office inside the store because the office had cameras. (b) (6), (b) (7)(C) then began the breast feeding using the Mall's bathroom. According to (b) (6), (b) (7)(C) this caused (b) (6), (b) (7)(C) much stress because there was no privacy and little by little (b) (6), (b) (7)(C) pumped less and less. (b) (6), (b) (7)(C) desire was to breast feed (b) (6), (b) (7)(C) new born for 1 year. On (b) (6), (b) (7)(C) had to stop breast feeding. The reason given was that the stress of not having a place to pump without interruptions and the aggravation of requesting a place to (b) (6), (b) (7)(C) supervisor and to Mall administration was very frustrating and finally caused (b) (6), (b) (7)(C) not to pump as frequently causing (b) (6), (b) (7)(C) to stop producing. (b) (7)(E) with the Mall and with (b) (6), (b) (7)(C) supervisor but these had no results. (b) (6), (b) (7)(C) was given time to pump and not charged for the time it took, therefore, there is no monetary violation. (b) (6), (b) (7)(C) states that the reason (b) (6), (b) (7)(C) (b) (7)(E) was to avoid this from happening to anyone else in the future. (b) (7)(E) data#1a- #1c, B-1a - B-1g,)

Section 6 - Minimum Wage

No Violations noted

Section 7 - Overtime/Nursing Mothers, Section 4207 of the Affordable care Act

A violation to the Nursing Mothers requirement was found. The violation resulted from the employer's failure to provide a place, other than a bathroom, that is shield from view and free from intrusion from co-workers and the public, which may be used by an employee to express milk. (Exhs: B-1a = B-1g, E-1,2,3)

Section 12 - Child Labor

No minors were employed contrary to the CL provisions of the FLSA.

DISPOSITION:

A final conference was held with Catherine Ryan and Kathy Jennings both attorneys for the firm out of NYC on 02/26/2014 via a tele-conference call. The violations were discussed in detail. Both attorneys stated that the

reason the violations occurred is that this is a fairly new law and the local managers were not aware that they must provide a place other than a bathroom free from view and intrusion. They must also, in the future notify corporate headquarters when they receive a request from a nursing mother. The firm understands that this investigation was ONLY LIMITED to Section 7 dealing with Nursing Mother's. All the participants were advised that to comply in the future the firm must:

- 1) Pay all non-exempt employees at least the minimum wage
- 2) Pay all non-exempt employees at least T-1/2 for hours worked in excess of forty in a workweek
- 3) Keep and maintain records as required by Part 516.
- 4) Comply with all applicable CL regulations.
- 5) **Establish a Nursing Mother's policy for all locations/branches for future compliance**

The firm agreed to fully comply in the future with all applicable provisions of the FLSA, including the Nursing Mother's regulation. They have now established a written policy that would apply to all locations Nation-wide. In addition they will provide education to supervisors, managers and HR personnel in order to ensure that the policy is understood and enforced. As far as the MAC stand-alone store, they have already indicated that in the future if an employee requests a place to pump they will be able to use the small office inside the store, cameras will be turned off and the door may be locked to provide privacy, in addition a sign outside the door will be placed stating "DO NOT DISTURB". For their counter stores inside the department stores such as Macy's, they are working with the department stores to have them ensure there is space available for employees who wish to express breast milk. The firm also knows and understands now that the employee should have hand washing facilities close by and a refrigerator to store the milk. If the location does not have a refrigerator then the employee needs a space so that she may bring her own cooler and store it in the job site along with the storing of the pump and attachments.

(b) (6), (b) (7)(C) was advised of the results of this investigation on 2/26/2014.

Publications provided and discussed: HRG, FMLA, Poster, 561,541, Nursing Mother Fact Sheet#73

Recommendations:

I recommend this case be closed administratively without further action.

(b) (6), (b) (7)(C)

Wage & Hour Investigator
2/26/2014

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1718179 Originating District: Miami FL District Office
Local Filing Number: 2014-249-16632 Investigating District: Miami FL District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 01/27/2014
Assignment Date: 01/27/2014

Employer Information

Trade Name: AVENTURA MALL Legal Name: Aventura Mall Venture, GP
Address: 19501 Biscayne Blvd EIN: 59-2162675
County: NAICS Code: 4539
Miami, FL 33180 No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 03/01/2013 BNPI:
To: 06/07/2013 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☒
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

FMLA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FMLA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

LIMITED to Nursing Mother SEction 7. ER is a mall management atty is Scott Schomber. No monetary violation found. ER ATFC and has now implemented a Nursing Mother policy for theri mall employees. REc Admn cls. without further action

WHI Signature: _____ Date: 02/27/2014

Reviewed By: _____ Date: _____

Case Number: 2014-249-16632

Aventura Mall Venture, G.P.
19501 Biscayne Blvd
Aventura, FL 33180

EIN: 59-2162675

COVERAGE:

This investigation was initiated as a (b) (7)(E) Case from a spin-off of MAC Cosmetics inside Aventura Mall. The case has been **LIMITED** only to **Nursing Mothers, under the Affordable Care Act, Section 7 of the FLSA,**

Subject firm is a Mall Management company. There are no other branches. The firm has (b) (4) direct employees, these employees include maintenance personnel, security, administrative office and valet. All employees of the establishment were covered on an enterprise basis under Section 3(s)(1)a for the entire investigative period. The firm's ADV is in the millions. In addition, some employees were individually covered during the entire investigation period as they regularly ordered and received goods from other states as well as the office personnel worked with the internet ordering supplies and doing banking.. See Exhs. C1- C-3

The firm is being represented by an attorney, Mr. Scott Schomber of the Law offices of McConnaughay, Duffy, Coonrod, Pope & Weaver P.A. located at 500 W Cypress Creek Rd, Suite 300, Ft Lauderdale FL 33309, phone 305-206-1176. .

NOTE: X-ref file: MAC Cosmetics 2014-249-16436.

The period of investigation is from 03/01/2013 to 06/07/2013.

EXEMPTIONS:

There are no exemptions applicable to whom this investigation has been limited.

STATUS OF COMPLIANCE:

(b) (7)(E) DATA:

This investigation was initiated (b) (7)(E) (b) (6), (b) (7)(C) states in (b) (7)(E) worked for the MAC stand-alone store inside Aventura Mall for over (b) (6), (b) (7)(C) was pregnant and (b) (6), (b) (7)(C) baby was born (b) (6), (b) (7)(C) told

(b) (6), (b) (7)(C) supervisor that (b) (6), (b) (7)(C) would be breast feeding. The supervisor told (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) would be able to use the Mall's bathroom. (b) (6), (b) (7)(C) told (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) would not be able to use the small office inside the store because the office had cameras. (b) (6), (b) (7)(C) then began the breast feeding using the Mall's bathroom. According to (b) (6), (b) (7)(C) this caused (b) (6), (b) (7)(C) much stress because there was no privacy and little by little (b) (6), (b) (7)(C) pumped less and less. (b) (6), (b) (7)(C) desire was to breast feed (b) (6), (b) (7)(C) new born for 1 year. On November (b) (6), (b) (7)(C) had to stop breast feeding. The reason given was that the stress of not having a place to pump without interruptions and the aggravation of requesting a place to (b) (6), (b) (7)(C) supervisor and to Mall administration was very frustrating and finally caused (b) (6), (b) (7)(C) not to pump as frequently causing (b) (6), (b) (7)(C) to stop producing. (b) (7)(E) with the Mall and with (b) (6), (b) (7)(C) supervisor but these had no results. (b) (6), (b) (7)(C) was given time to pump and not charged for the time it took, therefore, there is no monetary violation. (b) (6), (b) (7)(C) states that the reason (b) (7)(E) was to avoid this from happening to anyone else in the future. Exhs: E-2 - E-10

Section 6 - Minimum Wage

No Violations noted

Section 7 - Overtime/Nursing Mothers, Section 4207 of the Affordable care Act

A violation to the Nursing Mothers requirement was found. The violation resulted from the employer's failure to provide for their "direct" employees a place, other than a bathroom, that is shield from view and free from intrusion from co-workers and the public, which may be used by an employee to express milk. (Exhs: B-1a = B-1g, E-3 - E-10)

Section 12 - Child Labor

No minors were employed contrary to the CL provisions of the FLSA.

DISPOSITION:

A final conference was held with Attorney, Scott Schomber, on 02/27/2014 via a tele-conference call. The violations were discussed in detail. The attorney stated that the reason the violations occurred is that this is a fairly new law and the Mall management was not aware that they must provide a place other than a bathroom free from view and intrusion to their "direct" employees. The firm understands that this investigation was ONLY LIMITED to Section 7 dealing with Nursing Mother's. They also understand that they are under no obligation to provide the facility to other employees that are not theirs. In other words, they are not responsible for employees employed by any of their tenants, which includes departments stores and boutiques in the mall. Each employer is responsible to provide a facility to their own employees. All the participants were advised that to comply in the future the firm must:

- 1) Pay all non-exempt employees at least the minimum wage

- 2) Pay all non-exempt employees at least T-1/2 for hours worked in excess of forty in a workweek
- 3) Keep and maintain records as required by Part 516.
- 4) Comply with all applicable CL regulations.
- 5) **Establish a Nursing Mother's policy for future compliance**

The firm agreed to fully comply in the future with all applicable provisions of the FLSA, including the Nursing Mother's regulation. They have now established a policy that would apply to all Mall employees.. In addition they will provide education to supervisors, managers and HR personnel in order to ensure that the policy is understood and enforced. They have already indicated that in the future if an employee requests a place to pump they will be able to use an office inside the management offices on the 4th floor This office is not a bathroom . The firm also knows and understands now that the employee should have hand washing facilities close by and a refrigerator to store the milk. If the location does not have a refrigerator than the employee needs a space so that she may bring her own cooler and store it in the job site along with the storing of the pump and attachments.

At this time, they are also working to provide an area for their tenants and even mall customers to use somewhere in the mall.

Publications provided and discussed: HRG, FMLA, Poster, 561,541, Nursing Mother Fact Sheet#73

Recommendations:

I recommend this case be closed administratively without further action.

(b) (6), (b) (7)(C)

Wage & Hour Investigator
2/27/2014

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1718719 Originating District: Atlanta GA District Office
Local Filing Number: 2014-111-25328 Investigating District: Atlanta GA District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 02/03/2014
Assignment Date: 02/03/2014

Employer Information

Trade Name: Muscogee Manor Legal Name: Hospital Authority of Columbus, GA
Address: 7150 Manor Road EIN: 58-0866776
County: Muscogee
NAICS Code: 09670
Columbus, GA 31907 No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 03/06/2012 BNPI: 4
To: 03/05/2014 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☐
Compliance Status: Compliance (no violations found) Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

FMLA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FMLA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

17.5. (b) (6), (b) (7)(C) was not provided sufficient space with sufficient privacy to express breast milk. Upon investigation (b) (6), (b) (7) was provided two different locations that would have been sufficient. NV, ER ATFC. FS 73 and the FLSA Break Time for Nursing Mothers Provision were given to the ER.

WHI Signature: _____ Date: 03/21/2014

Reviewed By: _____ Date: _____

Hospital Authority of Columbus, GA d/b/a Case ID: 1718719
Muscogee Manor Center Local Filing ID: 2014-111-25328
7150 Manor Road FEIN: 58-0866776
Columbus, GA 31907
706-561-3218

FLSNM Narrative

Coverage

The enterprise has more than 50 employees and is therefore subject to PPACA, Patient Protection and Affordable Care Act which took effect on March 23, 2010. (P.L.111-148).

The Law amended Section 7 of the FLSA. Section 4207: Reasonable break time for Nursing Mothers.

Period of investigation: 3/6/2012 to 3/5/2014

MODO: (b) (7)(E)

Nature of the Business: The subject firm where the employee works is engaged in the operation of a nursing home/rehabilitation center to care for the aged or infirm.

Business Structure: The enterprise is controlled by a board of directors but the day to day operation of the business is conducted by Frank Morast, President and Britt Hayes, Vice President.

Branch Establishments: The Company has four other businesses, two are located on the same property as Muscogee Manor and two are at different locations.

Current Workforce: (b) (4) employees at all five locations; (b) (4) at Muscogee Manor itself.

History There is no prior history in Whisard.

Exemptions: As this was not a case of unpaid wages so no exemptions were explored.

Status of Compliance

Reason for Investigation

This limited investigation was initiated (b) (7)(E) (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) claims (b) (6), (b) (7)(C) was not provided sufficient space with sufficient privacy to express breast milk. Upon investigation (b) (6), (b) (7)(C) was provided two different locations that would have been sufficient. (b) (6), (b) (7)(C) claims the blinds in the conference room did not close all the way but they did when checked at the initial conference.

At first the employee's supervisor, (b) (6), (b) (7)(C), told (b) (6), (b) (7)(C) could use (b) (6), (b) (7)(C) office but (b) (6), (b) (7)(C) does not work on the weekends so (b) (6), (b) (7)(C) was told to use a conference room. The problem with the conference room is the blinds don't close at all. Then the Nurse Manager told (b) (6), (b) (7)(C) to use their office but they did not shut the door so people were coming in and out of the room while (b) (6), (b) (7)(C) was pumping. Eventually manager told (b) (6), (b) (7)(C) should put the baby on formula because she (b) (6), (b) (7)(C) making it hard on everybody else by taking so much time to express breast milk. Eventually the owner, Frank, told (b) (6), (b) (7)(C) had to clock in and out when pumping, (b) (6), (b) (7)(C) says it only takes five to ten minutes to pump; (b) (6), (b) (7)(C) did not do this, (b) (6), (b) (7)(C) just stopped pumping.

Investigation results of the complainant allegations:

PPCAC: No violation was found as the employer offered (b) (6), (b) (7)(C) three different locations to express (b) (6), (b) (7)(C) breast milk privately. Upon inspection one was not suitable, the resident library, because it was usually in use by a resident. Two other locations were offered, the chapel, the employee claims she was told this door could not be unlocked from the inside but it could be and the nurse manager on duty always has the key. The second location was the conference room where (b) (6), (b) (7)(C) claimed the blinds did not close at all. Upon inspection the blinds did close fully and the door could be locked and unlocked from the inside.

Back Wages: No back wages were computed because, even though inconvenienced, (b) (6), (b) (7)(C) did not lose any time at work and still works there although (b) (6), (b) (7)(C) suffered an on-the-job injury and is currently working under workman's compensation restrictions.

(b) (7)(E) of illegal deduction: (b) (6), (b) (7)(C) stated that each employee had a certain percentage of their pay taken to fund the building of a new facility. The employer informed me that they are mandated to provide a retirement account for each employee by the government. Each employee is required to contribute a percentage of their salary to this retirement account. This deduction is not a violation of the FLSA.

FMLA: The Company's FMLA policy is complete and contains all the current updates pertaining to the Military Care Giver leave. A copy of the employee handbook containing the policy is in the file.

DISPOSITION

The initial and final conference was held on the same day with WHI (b) (6), (b) (7)(C) and Tina Flora, HR Director in attendance. (b) (7)(E) were discussed, the three locations offered to the employee were toured and two were deemed adequate for the purpose of the Act.

The employer was advised to make sure the two areas that were deemed suitable were made available to any nursing mother in the future and to make sure the blinds in the conference room were kept in working order at all times. ER agreed to comply.

(b) (6), (b) (7)(C) was on duty that day and I advised (b) (6) of the results of the investigation. (b) (6), (b) (7)(C) was advised that the employer has adequate facilities for nursing mothers so the investigation would be closed.

Publications Provided: The following publications were provided to the employer at the final conference: Fact sheet #73 and Section 7(r) of the FLSA-Break Time for Nursing Mothers Provision.

(b) (7)(E)

Correspondence should be mailed to:

Muscogee Manor
7200 Manor Road
Columbus, GA 31907
Attn: Tina Flora, HR Director

Recommendation(s):

I recommend this file be administratively closed.

(b) (6), (b) (7)(C), WHI

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1723874 Originating District: Miami FL District Office
Local Filing Number: 2014-249-16872 Investigating District: Miami FL District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 03/25/2014
Assignment Date: 03/25/2014

Employer Information

Trade Name: 20th Judicial Circuit Legal Name: 20th Judicial Circuit
Address: 1700 Monroe St EIN: 59-6001874
County: Lee
NAICS Code: 0961
Fort Myers, FL33901 No. Of Employees: 200

Investigation Information

Period Investigated From: 01/03/2014 BNPI:
To: 04/02/2014 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

Total Violations Under FLSNM: 2 \$0.00

WHISARD Compliance Action Report

FMLA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FMLA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

30hrs violations sec 207r failure to provide adequate break time/ failure to provide privacy. final conference with hr director sharon suhar ph# 2395331710 who agreed to future compliance. no back wages were computed as (b) (6), (b) (7)(C) was on FMLA covered leave. HRG (w/sbrffa info given at initial conference and er directed to dol wqbsite for addl pubs and regs

WHI Signature: _____ Date: 04/15/2014

Reviewed By: _____ Date: _____

FLSNM NARRATIVE

Local Information:

20th Judicial Circuit

The Administrative Office of the Courts

1700 Monroe St

Ft. Myers FL 33901

Local Filing Number: 2014-249-16872

Case ID: 1723874

EIN 59-6001874

Administrative Office Contact:

Sharon Suhar; Human Resources Manager

Telephone: (239) 533-1710/ (239) 357-4418

FLSNM Coverage: The Administrative Office of the Courts' two main functions are case management and operational support, thereby providing a wide range of administrative, legal, financial, management, program, and information technology services to the 20th Judicial Circuit courts.

The court is a “Public Agency” as defined in Section 203(x) of The Fair Labor Standards Act (FLSA)

Therefore, this “Public Agency” is covered in accordance section 3(s)(1)c.
(Ex C-1 through C-2)

Prior History/MODO: The Jacksonville District Office is the MODO. (b) (7)(E)

(Ex D-1 through D-2)

Case assignment information: This investigation was initiated (b) (7)(E)

(b) (6), (b) (7)(C)

(b) (7)(E)

(b) (7)(E)

(b) (6), (b) (7)(C)

informed (b) (6), (b) (7)(C) supervisor (b) (6), (b) (7)(C) and HR Specialist Sharon Suhar of (b) (6), (b) (7)(C) intent to express breast milk for (b) (6), (b) (7)(C) child (b) (6), (b) (7)(C) when (b) (6), (b) (7)(C) returned from FMLA leave (b) (6), (b) (7)(C). (b) (6), (b) (7)(C) states that the arrangements were not satisfactory, that the allowed break time was not long enough considering the approximately 4 blocks (b) (6), (b) (7)(C) had to travel from the jail to (b) (6), (b) (7)(C) office. Additionally, (b) (6), (b) (7)(C) claims the space provided, (b) (6), (b) (7)(C) office, did not provide (b) (6), (b) (7)(C) enough privacy for expressing breast milk. Finally, (b) (6), (b) (7)(C) stated (b) (6), (b) (7)(C) felt (b) (6), (b) (7)(C) was being discriminated against for exercising (b) (6), (b) (7)(C) rights to **Nursing Mothers, under the Affordable Care Act, Section 207 (r) of the Fair Labor Standards Act (FLSA).**

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20th Judicial Circuit

Case ID 1723874
WHIZARD 2014-249-16872

STATUS OF COMPLIANCE:

Period of Investigation: This investigation covered the period of 01-03-2014 through 04-02-2014. This investigation is being presented as a limited investigation, limited only to Nursing Mothers, under the Affordable Care Act, Section 207 (r)

Exemptions: None claimed or granted

Section 206: Minimum Wage- The investigation revealed no violations

Section 207: Overtime/ Nursing Mothers, under the Affordable Care Act, Sec. 207 (r)

Violation: a reasonable break time for an employee to express breast milk for (b) (6), (b) (7)(C) nursing child for 1 year after the child's birth each time such employee has need to express the milk (Ex B-1 and D-3 through D-8)

Violation: a place, other than a bathroom, that is shielded from view and free

from intrusion from coworkers and the public, which may be used by an employee to express breast milk. (Ex. B-1 and D-3 through D-8)

Section 211: Record Keeping- The investigation revealed no violations.

Section 212: Child Labor- The investigation revealed no violations

FMLA: No violations found. A policy review of the State of Florida had been completed within a year of this investigation.

DISPOSITION:

A telephonic initial conference was held on 03-20-2014. WHI (b) (6), (b) (7)(C) represented Wage-Hour. Ms. Sharon Suhar, Human Resources Director represented the Administrative Office of the Courts. (b) (6), (b) (7)(C) informed Suhar that he had (b) (7)(E) from an employee that (b) (6), (b) (7)(C) FLSNM rights had been violated.

(b) (6), (b) (7)(C) (b) (7)(E): 1) the employer had not provided a place free from intrusion, (other employees could hear the pump running and that there were windows and a door with a window that did not provide privacy) 2) to travel from the jail to (b) (6), (b) (7)(C) office was approximately a 4 block walk 3) (b) (6), (b) (7)(C) had been discriminated against for requesting FLSNM to express breast milk for (b) (6), (b) (7)(C) newborn child.

On 04-02-2014, upon return from her FMLA leave WHI (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) toured the 20th Judicial Courts Facilities with Pre Trial director Liza Maldonado and HR Director Sharon Suhar.

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20th Judicial Circuit

Case ID 1723874
WHIZARD 2014-249-16872

Shown were the changes that had been implemented to (b) (6), (b) (7)(C) office:

1. Locks had been placed on (b) (6), (b) (7)(C) office door.
2. Sound resistant curtains had been hung on the office window.
3. The door to the office was sliding glass; making curtains impractical, in this instance dark paper

had been applied effectively blocking the view.

4. A fan or sound machine would be provided to effectively drown out any remaining noise.

Next we toured the law library and were shown the entrance that (b) (6), (b) (7)(C) would be allowed to use. By granting this access it allowed (b) (6), (b) (7)(C) to travel from the jail to the office in far less time.

(b) (6), (b) (7)(C) indicated all changes were acceptable.

Next we discussed (b) (7)(E) discrimination. Sharon Suhar readily admitted that an investigation was in process, focusing on (b) (6), (b) (7)(C) team. She went on to state it had nothing to do with (b) (7)(E) (b) (6), (b) (7)(C) and had been in process before (b) (6), (b) (7)(C) Nursing Mothers (b) (7)(E)

Sharon Suhar, HR Director, agreed to future compliance by;

A) a reasonable break time for an employee to express breast milk for her nursing child for 1 year after the child's birth each time such employee has need to express the milk; and

(B) a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk.

EMPLOYEE NOTIFICATION: WHI (b) (6), (b) (7)(C) contacted (b) (6), (b) (7)(C) on 04-07-2014 and informed (b) (6), (b) (7)(C) of the results of the investigation. No further action is required.

PUBLICATIONS: WHI (b) (6), (b) (7)(C) directed Ms Suhar to the DOL Website for additional publications and Fact Sheet 28d Fact Sheet 73 and HRG with SBRFFA info shown given at initial conference

RECOMMENDATION: WHI (b) (6), (b) (7)(C) recommends that the file be administratively closed with no further action.

(b) (6), (b) (7)(C), Wage-Hour Investigator

WHISARD Compliance Action Report

U.S. Department of Labor Wage and Hour Division

Case ID: 1731514 Originating District: Raleigh NC District Office
Local Filing Number: 2014-291-00810 Investigating District: Raleigh NC District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 06/09/2014
Assignment Date: 08/04/2014

Employer Information

Trade Name: Cleveland Childcare and Developement Legal Name: Cleveland Childcare and Development
Address: 78 Japwood Place EIN: 20-8042890
County: Wake
NAICS Code: 624410
Garner, NC27529 No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 04/01/2014 BNPI:
To: 05/22/2014 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Compliance (no violations found) Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

9 hrs. Ent. Cov. FLSANM case. (b) (7)(E) ER did not accomodate (b) (6),(7) per Nursing Mothers regs. (b) (7)(E). ER attempted to accomodate, but (b) (7) not satisfied. (b) (7) not seeking remedy; only wants ER in compliance. IC/FC held w/ owner Paulette Woodard, who promised full compliance in future. Etab has less than 50 ees (undue hardship). Please close.

WHI Signature: _____ Date: 09/16/2014

Reviewed By: _____ Date: _____

FLSA NURSING MOTHERS NARRATIVE

Cleveland Childcare and Development Center, Inc.
78 Japwood Pl.
Garner, NC 27529
(919) 661-2373

EIN: 20-8042890

President: Paulette Woodard
Vice President: Tony Woodard

Local Filing #: 2012-214-07989
Case ID #: 1654845

COVERAGE

This establishment is a child day care facility, specializing in care for children ages 6 weeks to 12 years old. The firm is covered on an enterprise basis under Section 3(s)1 of the Fair Labor Standards Act (FLSA), as it's annual dollar volume exceeds \$500,000 and it has more than 2 employees that handle goods that have moved in commerce. According to owner Paulette Woodard, the firm's gross yearly revenues are approximately (b) (4). The firm employs approximately (b) (4) full time employees and (b) (4) part time employees who handle goods such as pens, paper, teaching supplies, children's toys, and books. See exhibits B-2 and C-1.

Section 203(D) Employer: Ms. Paulette Woodard is the president of this firm and meets the definition of 3(d) employer under the FLSA. Ms. Woodard makes all executive and managerial decisions for his/her firm in relation to the employees (such as supervising and hiring/firing employees), and is responsible for the general operation of the business.

Scope of Investigation: This is a limited investigation of this firm under the Nursing Mothers amendment to Section 207 of the FLSA.

Investigation Site: Garner, NC

Period of Investigation: April 1, 2014 to May 22, 2014

MODO: (b) (7)(E) The Raleigh District Office is MODO. This is a single location establishment.

EXEMPTIONS

Section 13(a)(1): The exempt status of the firm's salaried employees was not explored during this limited investigation. (b) (6), (b) (7)(C) was not an exempt employee. (b) (6), (b) (7)(C) was an hourly employee.

Less than 50 employees (undue hardship): This employer employs (b) (4) workers. While Ms. Woodard did not expressly claim this exemption, she did state that she was not able to adjust everyone's schedule to meet the complainant's needs. See below.

STATUS OF COMPLIANCE

History: No history, per Whisard.

(b) (7)(E) (b) (6), (b) (7)(C) (b) (7)(E) (b) (6), (b) (7)(C) was not provided ample time or adequate space to express breast milk during the workday. (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) was terminated by owner Paulette Woodard due to the firm's inability to accommodate (b) (6), (b) (7)(C) need to express breast milk. (b) (6), (b) (7)(C)

sought no remedies; she just wanted to make sure that this employer was made to be in full compliance. (b) (6), (b) (7)(C)(b) (7)(E) . See exhibit B-1.

Section 206, Minimum Wage: Not explored in detail during this limited investigation. However, he lowest rate of paid by this employer is the current federal minimum wage of \$7.25.

Section 207, Overtime: No violation. (b) (6), (b) (7)(C) and owner Woodard attempted to establish a schedule to allow (b) (6), (b) (7)(C) to express breast milk. (b) (6), (b) (7)(C) schedule was adjusted several times to accommodate (b) (6), (b) (7)(C) need to express milk. Originally, a “floater” employee was covering for (b) (6), (b) (7)(C) while (b) (6), (b) (7)(C) expressed milk. However, due to scheduling conflicts, (b) (6), (b) (7)(C) schedule was altered once again, causing (b) (6), (b) (7)(C) to be unhappy with (b) (6), (b) (7)(C) slotted time to express milk. (b) (6), (b) (7)(C) and Ms. Woodard attempted to reach an agreement, but couldn't. While Ms. Woodard would have been able to accommodate (b) (6), (b) (7)(C) needs, she (Ms. Woodard) simply could not alter everyone's schedule to accommodate the exact schedule that (b) (6), (b) (7)(C) requested.

(b) (6), (b) (7)(C) claims (b) (6), (b) (7)(C) was terminated due to the firm's inability to accommodate (b) (6), (b) (7)(C) need to express breast milk during the workday. Ms. Woodard claims that it was (b) (6), (b) (7)(C) who stated that if (b) (6), (b) (7)(C) couldn't get the schedule (b) (6), (b) (7)(C) wanted (which including time for nursing (b) (6), (b) (7)(C) baby – an activity not covered by the Break Time for Nursing Mothers amendment) (b) (6), (b) (7)(C) would quit.

This firm employs only women. According to Ms. Woodard, women have expressed breast milk during their workday in the past, and that all women (including (b) (6), (b) (7)(C)) have been allowed to do so. Ms. Woodard exclaimed that there would be no reason not to allow an employee to express breast milk. She stated that there is ample time (within reason) and that there are several

adequate locations within the daycare facility to express milk in privacy. But, stated Ms. Woodard, it would have caused an undue hardship on her small business of (b) (6), (b) (7)(C) employees to fully comply with (b) (6), (b) (7)(C) requests to express breast milk and nurse (b) (6), (b) (7)(C) baby (who was one of the children at the day care facility) at specific times.

Section 211, Record Keeping: Not applicable during this limited investigation.

Section 212, Child Labor: No instances of illegal employment of minors were discovered by observation, records examination, or employee interviews.

Family and Medical Leave Act: This firm is not covered by the FMLA as it employs less than 50 people.

PART IV: DISPOSITION

A final conference was held with Ms. Paulette Woodard at the establishment September 3, 2014. Ms. Woodard explained, in detail, the events leading to (b) (6), (b) (7)(C) no longer working at the establishment. Ms. Woodard advised SIA (b) (6), (b) (7)(C) that she was under the impression (at least at the beginning) that all was OK regarding (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) need to express breast milk. In fact, Ms. Woodard lamented that (b) (6), (b) (7)(C) was no longer (b) (6), (b) (7)(C) employee, as there had never been any issues between them. According to Ms. Woodard, she attempted to meet (b) (6), (b) (7)(C) needs, but when (b) (6), (b) (7)(C) requested a schedule that she (Ms. Woodard) simply could not accommodate, the only solution (b) (6), (b) (7)(C) provided was quitting.

SIA (b) (6), (b) (7)(C) covered all the requirements of the Nursing Mothers provisions. Ms. Woodard admitted to not being fully aware of all the requirements, but felt comfortable in her ability to fully comply. Specifically, SIA (b) (6), (b) (7)(C) advised Ms. Woodard that (b) (6), (b) (7)(C) (b) (7)(E) included the fact that (b) (6), (b) (7)(C) expressed milk in one of the bathrooms, a prohibited place in which to express milk, according to the regulations. Ms. Woodard was aware that (b) (6), (b) (7)(C) expressed milk in a bathroom, but was not aware that the regulations prohibited bathrooms from being used. Ms. Woodard promised to never have any woman express breast milk in a bathroom in the future. To that end, Ms. Woodard provided SIA (b) (6), (b) (7)(C) with a tour of the establishment and showed one of the areas where women would be able to express breast milk. The space was adequate and compliant with the Nursing Mothers amendment. Ms. Woodard promised to fully comply in the future.

Recommendations: Recommend this case be administratively closed.

Publications provided: FLSA, HRG, Reg's 541, 778, 516, 531, and Fact Sheet #73 (Break Time for Nursing Mothers under the FLSA).

(b) (6), (b) (7)(C), SIA
September 16, 2014

WHISARD Compliance Action Report

U.S. Department of Labor Wage and Hour Division

Case ID: 1733040 Originating District: Louisville KY District Office

Local Filing Number: 2014-235-00329 Investigating District: Louisville KY District Office

WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)

Registration Date: 06/24/2014

Assignment Date: 06/24/2014

Employer Information

Trade Name: Kings Brook Life Care Center Legal Name: Ashland Nursing Home Corporation

Address: 2500 State Route 5 EIN: 26-3351475

County: Boyd

NAICS Code: 62311

Ashland, KY 41102 No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 02/22/2014 BNPI:

To: 07/29/2014 Reinvestigation: ☐

Investigation Type: (b) (7)(E) Recurring Violation: ☐

Investigation Tool: Full Investigation Future Compliance Agreed: ☒

Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐

CMP: ☐ Follow Up Investigation: ☐

Litigation: ☐ Other Action: ☐

Civil Action: ☐ Denial of Future Certificate: ☐

Criminal Action: ☐ BW Payment Deadline: ☐

Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	
Total Violations Under FLSNM:	2						\$0.00

WHISARD Compliance Action Report

FMLA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FMLA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	
Total Violations Under FMLA:	242						\$0.00

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

29.5 hours spent on case. Nursing mothers case. FLSA Enterprise coverage cited. Violations cited for failure to provide adequate break time and adequate break space. FLSA 215(a)(3) retaliation looked in to, (b) (7)(E)

ER ATC and will be updating policy on Nursing Mothers.

WHI Signature: _____ Date: 07/29/2014

Reviewed By: _____ Date: _____

BREAK TIME FOR NURSING MOTHERS NARRATIVE

Case ID	1733040
EIN	61-1386016
Legal Name	Ashland Nursing Home Corporation
Trade Name	Kingsbrook Lifecare Center
Address	2500 State Route 5 Ashland, KY 41102
Contact Info	Keith Carter-Risk Manager (606) 327-7010
Correspondence Should Be Sent To	Keith Carter 2500 State Route 5 Ashland, KY 41102
Attorney	W. Mitchell Hall, Jr. VanAntwerp, Monge, Jones, Edwards & McCann, LLP P.O. Box 1111 1544 Winchester Avenue, Fifth Floor Ashland, KY 41101 Telephone: (606)-329-2929 Ext. 240 Cell: (606)-923-0989 Telefax: (606)-329-0490 Email: whall@vmje.com
Website	http://www.kingsbrook-lifecare.com

Headquarters Address	2500 State Route 5 Ashland, KY 41102
Investigative Period	February 22, 2014 to July 29, 2014
Investigative Type	Full Investigation

MODO

This is a single location employer, located in Ashland, KY. Therefore, the Louisville, KY DO is the MODO (Exhibit D-1).

HISTORY

Case ID: 1447823-This was an FMLA case where (b) (6), (b) (7)(C) was on qualifying FMLA reason, starting on April 6, 2006. The company terminated this employee effective on (b) (6), (b) (7). However, the Wage and Hour Investigator determined that (b) (6), (b) (7)(C) had not exhausted their full 12 weeks of FMLA. The company agreed and stated they would reinstate this individual, as well as reinstate this individuals insurance, up until June 28, 2006; when the FMLA would be exhausted.

REASON FOR INVESTIGATION

(b) (6), (b) (7)(C)
(b) (7)(E) was terminated from (b) (6), (b) job for expressing breast milk. (b) (6), (b) stated the company failed to provide a dedicated room for (b) (6), (b) to express (b) (6), (b) milk in. (b) (6), (b) stated that (b) (6), (b) was terminated, when (b) (6), (b) asked to express (b) (6), (b) breast milk in the bathroom of one of (b) (6), (b) patient's rooms. A fellow nurse walked in on (b) (6), (b) (7)(C) expressing (b) (6), (b) breast milk in this patient's room. This nurse then went to management and reported that (b) (6), (b) (7)(C) was expressing in a patient's room. Management of Kingsbrook Lifecare Center then called (b) (6), (b) (7)(C) in and terminated (b) (6), (b) (7)(C) for pumping milk in a patient's room (See WHISARD (b) (7)(E) and Exhibit B-3).

See Exhibit A-1 for (b) (6), (b) (7)(C) work history with the company.

COVERAGE

Kingsbrook Lifecare Center specializes in healthcare rehabilitation, specifically dealing with short term rehabilitation, long term disabilities, cardiac care, stroke care, orthopedic care, wound care, palliative care, diabetes care, nutrition therapy, and infection disease care. Kingsbrook currently employs (b) (4) employees (Exhibit B-2 and D-2-A to D-2-B).

The company is covered under Section 203(s)(1)(A). The company reported their annual dollar volume for CY 2013 as (b) (4); for CY 2012 as (b) (4); and for CY 2011 as (b) (4). The company deals in interstate commerce by daily interactions with Anthem Insurance, which is headquartered in Atlanta, GA. The company also deals with other insurance companies across the U.S (Exhibit D-2-A to D-2-B).

The company can also be found to be covered under 203(s)(1)(B). The facility is an institution primarily engaged in the care of the sick and the aged, all of which reside on the premises of the employer.

EXEMPTIONS

There were no exemptions claimed or applicable. (b) (6), (b) (7)(C) was a nurse's aide, being paid (b) (6), (b) (7)(C) an hour (Exhibit B-3).

STATUS OF COMPLIANCE

On June 27, 2014 (b) (6), (b) (7)(C) provided this investigator with (b) (7)(E) over the phone.

Important Dates Dealing with Ms. Roush and her Nursing Mothers case:

February 22, 2014 (b) (6), (b) (7)(C) started on approved FMLA Leave for qualifying medical condition

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) returned from work and came off FMLA Leave. This is the date that

(b) (6), (b) (7)(C) stated (b) (6), (b) (7)(C) informed (b) (6), (b) (7)(C) manager of the need to express breast milk

June 3, 2014- (b) (6), (b) (7)(C) was found to be expressing milk in a patient's room. This was also the last workday for (b) (6), (b) (7)(C)

June 5, 2014-M (b) (6), (b) (7)(C) was terminated by the company, due to the fact that (b) (6), (b) (7)(C) was found to be expressing milk in a patient's room.

July 29, 2014- (b) (6), (b) (7)(C) was informed, by this investigator, of the results of the investigation. (b) (6), (b) (7)(C) was informed of (b) (6), (b) (7)(C) 216(b) rights.

Insufficient Break Time-Section 207(r)(1)(A)

A violation occurred when the company failed to provide (b) (6), (b) (7)(C) with a reasonable break time to express breast milk for (b) (6), (b) (7)(C) nursing child. (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) informed (b) (6), (b) (7)(C) nursing supervisor at the beginning of each shift of (b) (6), (b) (7)(C) need to express breast milk for (b) (6), (b) (7)(C) nursing child. (b) (6), (b) (7)(C) stated that the supervisors stated this was ok, but failed to notify (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) could express breast milk when need be. (b) (6), (b) (7)(C) stated the company failed to provide (b) (6), (b) (7)(C) with an adequate amount of break time to express breast milk. (b) (6), (b) (7)(C) stated that when the need arose to express breast milk, (b) (6), (b) (7)(C) would find any place available to attempt to express breast milk and try and get back to work as soon as possible, as to not upset (b) (6), (b) (7)(C) supervisors. (b) (6), (b) (7)(C) stated that fellow employees and supervisors grew angry with (b) (6), (b) (7)(C) because (b) (6), (b) (7)(C) was taking time off work to express breast milk (Exhibit B-3).

At the initial conference, Arlene Massie, Director of Nursing, informed this investigator that she was not aware that (b) (6), (b) (7)(C) had a need to express breast milk for (b) (6), (b) (7)(C) nursing child. She stated that although nursing supervisors may have known of the need for (b) (6), (b) (7)(C) to express breast milk, never did those supervisors bring the need to the attention of Ms. Massie (Exhibit B-2).

On July 1, 2014 at the conclusion of the initial conference the employer was notified of the Patient Protection and Affordable Care Act ("Affordable Care Act") amended [section](#) ("FLSA") to require employers to provide reasonable break time for an employee to express breast milk for (b) (6), (b) (7)(C)

nursing child for one year after the child's birth each time such employee has need to express the milk. The employer was notified that the **break time requirement became effective when the Affordable Care Act was signed into law on March 23, 2010.**

The employer stated they were not aware of these requirements. The employer was asked by this investigator to attempt to remedy the situation, based on the fact that the company failed to provide (b) (6), (b) (7)(C) with adequate time to express breast milk.

On July 10, 2014 the company provided a response (b) (7)(E) stating that (b) (6), (b) (7)(C) was not terminated for expressing milk. The company stated that (b) (6), (b) (7)(C) was terminated because (b) (6), (b) (7)(C) used a patient's room to express milk. The company disagreed that (b) (6), (b) (7)(C) should be due reinstatement to (b) (6), (b) (7)(C) position, or any back wages. (Exhibit D-4-A to D-4-B).

(b) (7)(E)

Insufficient Space-207(r)(1)(B)

A violation occurred when the company failed to provide (b) (6), (b) (7)(C) with a place, other than a bathroom, that is shielded from view and free from intrusion from co-workers and the public, which may be used by an employee to express breast milk. (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) informed (b) (6), (b) (7)(C) nursing supervisor at the beginning of each shift of (b) (6), (b) (7)(C) need to express breast milk for (b) (6), (b) (7)(C) nursing child. (b) (6), (b) (7)(C) stated that the supervisors stated this was ok, but failed to ever give (b) (6), (b) (7)(C) a set location where (b) (6), (b) (7)(C) could express breast milk, free of intrusion (b) (6), (b) (7)(C) stated that when the need arose to express breast milk, (b) (6), (b) (7)(C) would either use the break room as much as possible, but at times this was not applicable, so (b) (6), (b) (7)(C) would try and find rooms where there were no patients. (b) (6), (b) (7)(C) stated that the break room would have other workers that were coming in/out constantly, so (b) (6), (b) (7)(C) was constantly being intruded upon.

On July 10, 2014 the company provided a response (b) (7)(E) stating that (b) (6), (b) (7)(C) was not terminated for expressing milk. The company stated that (b) (6), (b) (7)(C) was terminated because (b) (6), (b) (7)(C) used a patient's room to express milk. The company disagreed that (b) (6), (b) (7)(C) should be due

reinstatement to (b) (6), (b) (7)(C) position, or any back wages.

(b) (7)(E)

Retaliation-215(a)(3)

(b) (6), (b) (7)(C) stated that on June 3, 2014 when (b) (6), (b) (7)(C) was expressing milk, (b) (6), (b) (7)(C) had gotten prior approval from the patients whose room (b) (6), (b) (7)(C) was expressing milk in. (b) (6), (b) (7)(C) stated that the patient said this was ok and (b) (6), (b) (7)(C) was using the patient's bathroom when this occurred. The company stated that (b) (6), (b) (7)(C) was expressing milk (while covered up), next to the patient, when a fellow nurse walked in. The fellow nurse then reported this instance to upper management. On June 5, 2014 (b) (6), (b) (7)(C) was terminated by the employer.

This violation occurred, due to the fact that the employer failed to provide (b) (6), (b) (7)(C) with sufficient break time, or a sufficient space to express breast milk. This investigator informed the company that if the company would have provided (b) (6), (b) (7)(C) with a sufficient break time and a sufficient space to express breast milk, the need to express breast milk in patient's rooms would not have been needed. If (b) (6), (b) (7)(C) would have had (b) (6), (b) (7)(C) own designated space, (b) (6), (b) (7)(C) could have expressed (b) (6), (b) (7)(C) breast milk at this location, whenever needed.

The company argued that (b) (6), (b) (7)(C) expressed (b) (6), (b) (7)(C) breast milk in a patient's room and this was against company policy. This investigator stated (b) (6), (b) (7)(C) understood that it was against company policy; however company policy may have never been violated, had the employee been given sufficient break time and sufficient space to express breast milk.

On July 10, 2014 the company provided a response (b) (7)(E), stating that (b) (6), (b) (7)(C) was not terminated for expressing milk. The company stated that (b) (6), (b) (7)(C) was terminated because (b) (6), (b) (7)(C) used a patient's room to express milk. The company disagreed that (b) (6), (b) (7)(C) should be due reinstatement to (b) (6), (b) (7)(C) position, or any back wages.

(b) (7)(E)

(b) (7)(E)

Other Information

-The company did not have a Nursing Mother Policy, which employees were to follow. They are currently developing a company policy on this issue.

-Kentucky state law Ky. Rev. Stat. § 211-755 (2006) permits a mother to breastfeed her baby or express breast milk in any public or private location. Requires that breastfeeding may not be considered an act of public indecency, indecent exposure, sexual conduct, lewd touching or obscenity. Prohibits a municipality from enacting an ordinance that prohibits or restricts breastfeeding in a public or private place. (2006 SB 106)

(b) (6), (b) (7)(C) stated in interview there were no FMLA issues, during the time (b) (6), (b) (7)(C) was out on FMLA leave.

-This investigator took a tour of the break room which (b) (6), (b) (7)(C) stated (b) (6), (b) (7)(C) would express (b) (6), (b) (7)(C) breast milk. This room was of the dimensions of 30 feet by 30 feet room (approximately). At the time this investigator looked at this room, there were approximately 10 employees also in this room, as this is where they were expected to eat during their breaks. There was a single room, approximately 20 feet by 20 feet that was attached to this break room. In this room, this is where employees had their own personal lockers and could hang their coats. Neither one of these rooms would have provided (b) (6), (b) (7)(C) a place which was free from intrusion from coworkers. This investigator took pictures of each of these rooms.

FMLA

On July 3, 2014 this investigator reviewed the company's current FMLA Policy. It was determined that the current policy did not meet Wage and Hour standards. The policy was last updated in January 2008. The current company policy failed to include information on Military Family Leave Entitlements (Exhibit D-3-A to D-3-D).

This investigator emailed Keith Carter, Risk Manager for Kingsbrook, and informed him that the company's current FMLA Policy did not meet Wage and Hour standards. This investigator provided Mr. Carter with a copy of the FMLA Poster. Mr. Carter was informed that all information in the FMLA Poster, must also be included in the company's FMLA Policy.

DISPOSITION

Present at the initial conference was Arlene Massie, Director of Nursing; Adam Rucker, Resident Services Director; and Keith Carter, Risk Manager.

At the conclusion of the initial conference, after reviewing company information and getting details from company on the reasoning why (b) (6), (b) (7)(C) was fired, this investigator provided the company *Fact Sheet #73-Break Time for Nursing Mothers under the FLSA; Break Time for Nursing Mothers FAQ's, and Questions and Answers about the Request for Information*; all of which was taken from the DOL-WHD website.

This investigator explained to the company that per Section 215(a)(3) of the FLSA that any employee who is "discharged or in any other manner discriminated against" because, for instance, he or she has filed a complaint or cooperated in an investigation, may file a retaliation complaint with the Wage and Hour Division or may file a private cause of action seeking appropriate remedies including, but not limited to, employment reinstatement, lost wages and an additional equal amount as liquidated damages.

This investigator explained that based on the information provided, it appeared the company failed to provide sufficient break time, sufficient space to express breast feed, and the company was found to have retaliated against this employee, due to the company failing to provide the items listed above. This investigator stated that (b) (6), (b) (7)(C) understood the company's position, but had (b) (6), (b) (7)(C) been given sufficient break times and a sufficient space, dedicated to (b) (6), (b) (7)(C), then there would be no need to express breast feed in patients rooms.

The company stated they understood and would need some time to review the information with their legal team. They did have some hesitation because they believed they were justified in

firing this employee, due to the fact that (b) (6), (b) (7)(C) should have known it was not ok to express breast feed in a patient's room.

The company asked this investigator what remedies Wage and Hour would be requesting to conclude the case. This investigator replied that remedies typically include, but are not limited to, employment reinstatement, lost wages and an additional equal amount as liquidated damages. However, this investigator stated at that time there were no remedies that could be given to close case. It was stated that the case file and all supporting documents would need to fully reviewed. The company stated they understood and would provide a response by July 10, 2014.

(b) (7)(E)

(b) (7)(E)

On July 29, 2014 this investigator held a telephone conference with Mitch Hall, Attorney representing the business. Mr. Hall was informed of the violations that the company was being charged with. Mr. Hall was informed of the need to provide future nursing mothers with adequate break time and an adequate break space to express milk. Mr. Hall stated that he understood and the company is in the process of creating a company policy on expressing milk. Mr. Hall was informed that the company would not be asked to pay back wages nor reinstate (b) (6), (b) (7)(C) Mr. Hall stated that he understood.

RECOMMENDATION

It is recommended that the case file be administratively closed.

(b) (6), (b) (7)(C)

Investigator

7/29/14

WHISARD Compliance Action Report

U.S. Department of Labor Wage and Hour Division

Case ID: 1739776 Originating District: Atlanta GA District Office

Local Filing Number: 2014-111-26615 Investigating District: Atlanta GA District Office

WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)

Registration Date: 09/08/2014

Assignment Date: 09/08/2014

Employer Information

Trade Name: Kroger Legal Name: The Kroger Company Inc

Address: 311 E. Gwinnett Street EIN: 31-0345740

County: Chatham

NAICS Code: 445110

Savannah, GA31401 No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 07/01/2014 BNPI:

To: 09/30/2014 Reinvestigation: ☐

Investigation Type: (b) (7)(E) Recurring Violation: ☐

Investigation Tool: Limited Investigation Future Compliance Agreed: ☒

Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐

CMP: ☐ Follow Up Investigation: ☐

Litigation: ☐ Other Action: ☒

Civil Action: ☐ Denial of Future Certificate: ☐

Criminal Action: ☐ BW Payment Deadline: 10/17/2014

Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

Total Violations Under FLSA: 1 \$0.00

WHISARD Compliance Action Report

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	1	1	\$1,379.70	\$1,379.70	\$0.00	\$0.00	

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	1	Unduplicated Employees Agreed:	1
Total Amount BWs Computed:	\$1,379.70	Total Amount BWs Agreed:	\$1,379.70
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

(b) (7)(E) under sec 207(r); Subject (b) (4) company with multiple establishments throughout the US employs (b) (4) of EEs, cov asserted on an enterprise basis under sec 203(s)(1)(A); one EE cov under sec 207(r); ER in vio of sec 207(r) failed to provide nursing mother space & time to express milk, vio generated BWs for lost wages totaling \$1379.70. Held FC w/GM ATFC & ATP BW, will forward WH-56 to Corp for sig.

Rec: MODO FU w/Corp; close file (b) (7)(E)

Provided FS-73

WHI Signature: _____ Date: 09/26/2014

Reviewed By: _____ Date: _____

The Kroger Company d.b.a. Kroger
311 E. Gwinnett St
Savannah, GA 31401
Phone Number: (912) 231-2260

EIN: 31-0345740
Date: 09/19/2014

FLSNM NARRATIVE REPORT

Background: This investigation was initiated (b) (7)(E) (b) (6), (b) (7)(C) (b) (7)(E) (b) (6), (b) (7)(C) employer refused to provide space and ample time to express milk at the work place. Further, that (b) (6), (b) (7)(C) was instructed not to return to work until (b) (6), (b) (7)(C) was done breast feeding (b) (6), (b) (7)(C) new-born. See WH-3

COVERAGE

The Kroger Company, a national grocery store and multi-million dollar business operates approximately 3500 stores and employs (b) (4) of employees throughout the U.S., therefore, coverage on an enterprise basis is asserted under the provisions of section 203(s)(1)(A)(ii) of the Act. The Kroger Company incorporated in Ohio, is located at 1014 Vine St. Cincinnati, OH; the corporate officials are, David B. Dillion, CEO, Michael Schlotman, CFO and Rodney W. McMullen, COO. See ex. C-1

Coverage is asserted under section 207(r), as the enterprise employs more than 50 employees and is therefore subject to the Patient Protection and Affordable Care Act (PPACA) which took effect on March 23, 2010. (P.L.111-148). As such, the Law amended Section 7 of the FLSA. Section 4207: Reasonable break time for Nursing Mothers. See ex. C-1

Period of investigation: 7/01/2014 to 9/30/2014

Limits: The investigation was limited to compliance under section 207(r) for one employee, (b) (6), (b) (7)(C), and the period in question from 07/01/2014 through 09/30/2014.

History: Although WHISARD indicates previous contact with this employer, there is no history on this particular establishment and or history of violations related to Nursing Mothers. See Exhibit D-1 and

D-1a

MODO: Subject is incorporated in the state of Ohio, MODO contact made on 09/12/14, (b) (7)(E) See ex. D-0

EXEMPTIONS

Section 213: Per aforementioned, exemptions were not explored.

STATUS OF COMPLIANCE

Reason for Investigation: This limited investigation initiated (b) (7)(E) (b) (6), (b) (7)(E) (b) (6), (b) (7)(C) was not provided sufficient space and sufficient time to express breast milk, and, that (b) (6), (b) (7)(C) was terminated until (b) (6), (b) (7)(C) was done breast feeding (b) (6), (b) (7)(C) newborn. See WH-3

(b) (6), (b) (7)(C)(b) (7)(E); the investigation determined:

1. (b) (6), (b) (7)(C) an hourly rate employee was assigned to the Bakery/Deli Department as a Bakery clerk prior to going on maternity leave (b) (6), (b) (7)(C) It should be noted, as a part time employee, (b) (6), (b) (7)(C) was ineligible or protected under the FMLA while on maternity leave.
2. (b) (6), (b) (7)(C) return to work (b) (6), (b) (7)(C), assigned to the Bakery/Deli Department as a deli clerk.
3. Upon (b) (6), (b) (7)(C) return to work, (b) (6), (b) (7)(C) requested sufficient time to express milk for (b) (6), (b) (7)(C) new born. It is understood, for the first two work days, management granted request and accommodated (b) (6), (b) (7)(C) by allowing (b) (6), (b) (7)(C) to leave the store so (b) (6), (b) (7)(C) could go to a friend's house who lived close by for the purpose of expressing milk.
4. On or about 07/18/14, (b) (6), (b) (7)(C) was approached by management and informed that (b) (6), (b) (7)(C) was taking too much time (2 to 3 hours) when (b) (6), (b) (7)(C) left to express milk. (b) (6), (b) (7)(C) requested space at the work

place to express milk; the options presented were, a corner space at the bakery partitioned by boxes, and or employee bathroom. (b) (6), (b) (7)(C) declined both options presented, therefore, management suggested that (b) (6), (b) (7)(C) return to work when (b) (6), (b) (7)(C) was done breast feeding (b) (6), (b) (7)(C) newborn.

5. Investigation determined both spaces were inadequate and did not provide reasonable privacy nor met the requirements per Fact Sheet 73. **See pictures ex. D-6**
6. The week of 07/24/14 (b) (6), (b) (7)(C) was scheduled to work but never informed, therefore, (b) (6), (b) (7)(C) did not report to work. On 07/31/14, (b) (6), (b) (7)(C) work status changed and (b) (6), (b) (7)(C) was put on the employee inactive list, but not terminated.
7. It was also determined, Corporate HR did not provide management with written guidance, nor did management receive adequate training to address issues related to Nursing Mothers under section 7(r); as an example, when management was asked regarding options on providing an appropriate space for Nursing Mothers, all managers recommended the employee's bathroom as an option.

Violations under the PPCA:

Section 206: Not applicable; employer met the minimum wage obligation compensating employee at a regular hourly rate of no less than \$7.30.

Section 207: Employer violated section 207 of the Act, in that; management failed to comply with the provisions set forth under section 207(r)(A) and (B), for Nursing Mothers. Employer failed to provide (b) (6), (b) (7)(C) adequate space and reasonable time for the purpose of expressing milk. Further, employer instructed (b) (6), (b) (7)(C) not to return to work until (b) (6), (b) (7)(C) was done breast feeding (b) (6), (b) (7)(C) newborn, resulting in (b) (6), (b) (7)(C) losing wages for the period 08/02/14 to 09/13/14. **See ex. A-1**

(b) (7)(E)

Back-wages generated total \$1,379.70 for one employee; See ex. A-1

Section 211: None found

Section 212: No violations were found under this section. Although employer hires minors, it is understood, the established HR policies and procedures does not allow management to employ minors contrary to the child labor requirements. **See ex. E-2**

DISPOSITION

On 09/23/2014, a final conference was held with **John Powell, General Manager**, this WHI represented Wage and Hour. **See ex. B-1 through B-5, C-1, E-1 and E-2**

During the final conference, this WHI discussed the investigation findings per requirements set forth in Fact Sheet 73, and, the violations found under 207(r)(1); the employer failed to provide—

- (A); a reasonable break time for an employee to express breast milk for her nursing child for 1 year after the child's birth each time such employee has need to express the milk; and
- (B); a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk.

Further discussion involved back wages related to loss wages as a result of management suggesting that (b) (6), (b) (7)(C) return to work once (b) (6), (b) (7)(C) was done breast feeding (b) (6), (b) (7)(C) newborn.

This WHI also conducted a work site inspection with management to identify an appropriate space for employees should the need arise in the future for Nursing Mothers to express milk. It was determined and management concurred that a storage room co-located in the flower shop would be suitable and meets the requirements per Fact Sheet 73 and section 207(r) of the Act. **See pictures Ex. D-6**

Mr. Powell acknowledged his understanding, assured this WHI that he would take the appropriate steps to comply in the future. Further, Mr. Powell contacted Corporate HR and informed them of the findings and the absence of policies and procedures regarding Nursing Mothers. It is understood that Corporate HR agreed to revise employee hand book to address the Nursing Mothers requirements and ensure compliance throughout all of their stores.

On **09/23/2014**, Mr. Powell agreed to future compliance and agreed to pay the back-wages owed to (b) (6), (b) (7)(C) totaling \$1,379.70. Mr. Powell signed WH-56 and assured this WHI that the documents would be forwarded to Corporate HR for the payment of the back-wages.

On 09/22/14, this WHI contacted (b) (6), (b) (7)(C) and informed (b) (6), (b) (7)(C) of the investigation findings and outcome.

Correspondence should be mailed to:

The Kroger Company
1014 Vine St.
Cincinnati, OH 45202
Attn: Tony Demmi, HR Director
(770) 496-3098

Publications: The following publications were provided to the employer at the final conference: Fact sheet #73 and Section 7(r) of the FLSA-Break Time for Nursing Mothers Provision.

Recommendation: (b) (7)(E)

I recommend this case be administratively closed.

(b) (6), (b) (7)(C)

Wage and Hour Investigator
09/26/14

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1635319 Originating District: New York City District Office
Local Filing Number: 2012-265-18983 Investigating District: New York City District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 10/31/2011
Assignment Date: 11/08/2011

Employer Information

Trade Name: Bryant High School Legal Name: William Cullen Bryant High School
Address: 48-10 31st Avenue EIN: 10-0000000
County: Queens
NAICS Code: 611110
No. Of Employees: (b) (4)
Long Island City, NY 11103

Investigation Information

Period Investigated From: 11/08/2011 BNPI:
To: 11/21/2011 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Not Applicable Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☒
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

WHISARD Compliance Action Report

Conclusions & Recommendations:

Hrs. 2.5 hours EE (b) (7)(E) employers violations under the FLSA Nusring Mothers Act. FC held 11/16/11 with (b) (6), EE, over the phone. No violation found. EE was not covered under FLSA. Rec admin close.

WHI Signature: _____ Date: 12/07/2011

Reviewed By: _____ Date: _____

11/8/11 Spoke with (b) (6), (b) (7)(C) regarding the case (b) (6), (b) (7)(C) explained that the room (b) (6), (b) (7)(C) was given access to express milk is not private and not easily accessible. Whenever (b) (6), (b) (7)(C) wants to use the room to express milk (b) (6), (b) (7)(C) has to go get the key from the principal. The principal is not always around to give (b) (6), (b) (7)(C) the key, so (b) (6), (b) (7)(C) does not have the ability to always access the room when (b) (6), (b) (7)(C) needs it. (b) (6), (b) (7)(C) informed me that the room that is also used for meetings so at times (b) (6), (b) (7)(C) cannot use it because there are meetings being held. (b) (6), (b) (7)(C) contacted the principal of the school (b) (6), (b) (7)(C) works in twice via email and have not received any remedy to situation to date. Spoke with (b) (6), (b) (7)(C) for 20 minutes. (b) (6), (b) (7)(C) said (b) (6), (b) (7)(C) will forward me the emails that (b) (6), (b) (7)(C) sent the principal)

11/8/11 Researched and (b) (7)(E) found (b) (6), (b) (7)(C) to be exempt from the law

11/16/11 Conducted a final with (b) (6), (b) (7)(C) to explain (b) (6), (b) (7)(C) exemption and sent out a follow up letter to close out (b) (7)(E)

(b) (6), (b) (7)(C)

Investigator

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1746096 Originating District: Louisville KY District Office
Local Filing Number: 2015-235-00050 Investigating District: Louisville KY District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 11/17/2014
Assignment Date: 11/17/2014

Employer Information

Trade Name: Dover Manor Nursing Home

Legal Name: Dover Manor, Inc.

Address: 112 Dover Drive

EIN: 61-0903791

County: Scott

NAICS Code: 62311

Georgetown, KY40324

No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 11/25/2012

BNPI:

To: 11/24/2014

Reinvestigation: ☐

Investigation Type: (b) (7)(E)

Recurring Violation: ☐

Investigation Tool: Full Investigation

Future Compliance Agreed: ☒

Compliance Status: Agree to Comply

Involved in AG: ☐

Recommended Action:

BWFS: ☐

RO/NO Review: ☐

CMP: ☐

Follow Up Investigation: ☐

Litigation: ☐

Other Action: ☐

Civil Action: ☐

Denial of Future Certificate: ☐

Criminal Action: ☐

BW Payment Deadline: 12/19/2014

Submit For Opinion: ☐

Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	1	1	\$564.25	\$564.25	\$0.00	\$0.00	

Total Violations Under FLSNM: 2 \$0.00

WHISARD Compliance Action Report

FMLA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FMLA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	
Total Violations Under FMLA:	260						\$0.00

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	1	Unduplicated Employees Agreed:	1
Total Amount BWs Computed:	\$564.25	Total Amount BWs Agreed:	\$564.25
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

22 hrs on case. 203(s)(1)(B) coverage cited. Violations found when ER failed to follow Nursing Mothers regulations by failing to provide reasonable break time and a dedicated location to express milk. ER agreed to pay Ct \$564.25 in back wages for 2 weeks of back pay, prior to (b) (6) finding new job.

WHI Signature: _____ Date: 12/09/2014

Reviewed By: _____ Date: _____

BREAK TIME FOR NURSING MOTHERS NARRATIVE

Case ID	1746096
EIN	61-0903791
Legal Name	Dover Manor, Inc.
Trade Name	Dover Manor Nursing Home
Address	112 Dover Drive Georgetown, KY 40324
Contact Info	Laura Shields-Director of Nursing (502) 863-2862
Correspondence Should Be Sent To	Laura Shields 112 Dover Drive Georgetown, KY 40324
Website	http://www.dovermanor.com
Headquarters Address	112 Dover Drive Georgetown, KY 40324
Investigative Period	May 19, 2014 to November 24, 2014
Investigative Type	Full Investigation

MODO

This is a single location employer, located in Georgetown, KY. Therefore, the Louisville, KY DO is the MODO (Exhibit D-1).

HISTORY

There was no history determined on this company.

REASON FOR INVESTIGATION

(b) (6), (b) (7)(C) (b) (7)(E) was harassed and discriminated against by Dover Manor Nursing Home, due to the company denying (b) (6), (b) (7)(C) rights under the Break Time for Nursing Mothers (Exhibit B-3-A to B-3-F).

(b) (6), (b) (7)(C) (b) (7)(E) was forced to terminate (b) (6), (b) (7)(C) position, due to medical conditions that arose from the company failing to provide (b) (6), (b) (7)(C) an adequate space and adequate break time to express milk. (b) (6), (b) (7)(C) stated the company failed to provide a dedicated room for (b) (6), (b) (7)(C) to express (b) (6), (b) (7)(C) milk in. (b) (6), (b) (7)(C) stated the company informed (b) (6), (b) (7)(C) could only express milk during (b) (6), (b) (7)(C) breaks. (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) developed medical conditions, due to issues that arose from the company failing to meet the requirements of the Break Time for Nursing Mothers. (See WHISARD (b) (7)(E) and Exhibit B-3-A to B-3-F).

COVERAGE

Dover Manor Nursing Home specializes in nursing care for the elderly (Exhibits B-1 to B-5). Dover Manor currently employs (b) (4) employees (Exhibit C-1-A). The company was incorporated on July 7, 1976.

The company is covered under Section 203(s)(1)(A). The company reported their annual dollar volume for CY 2013 as (b) (4); for CY 2012 as (b) (4); and for CY 2011 as (b) (4). The company deals in interstate commerce by daily interactions by ordering medical supplies from Medline and Gulf South. Medline headquarters are based out of Mundelein, IL. Gulf South headquarters are based out of Jacksonville, FL. In addition, the company orders their food from Gordon Food Supplies, headquartered in Grand Rapids, MI (Exhibit C-1-A to C-1-B).

The company can also be found to be covered under 203(s)(1)(B). The facility is an institution primarily engaged in the care of the sick and the aged, all of which reside on the premises of the employer (Exhibits B-1 to B-5).

(See Exhibit D-2 for a breakdown of ownership of Dover Manor)

EXEMPTIONS

There were no exemptions claimed or applicable.

STATUS OF COMPLIANCE

On November 18, 2014 (b) (6), (b) (7)(C) provided this investigator with (b) (7)(E) over the phone.

(For below information see Exhibits B-1 to B-5)

Important Dates Dealing with (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) Nursing Mothers case:

(b) (6), (b) (7)(C) started working for the company

(b) (6), (b) (7)(C) went out on maternity leave

(b) (6), (b) (7)(C) returned to work and informed the company of (b) (6), (b) (7)(C) need to express milk. All interviews with management confirmed that (b) (6), (b) (7)(C) verbally informed management of the need to express milk.

October 20, 2014- (b) (6), (b) (7)(C) was written up by management of Dover Manor. One of the reasons stated on write-up states "Excessive Breaktime."

November 5, 2014 and November 6, 2014- (b) (6), (b) (7)(C) no showed or no called to work and the employer terminated (b) (6), (b) (7)(C). Employer stated they have still not heard from (b) (6), (b) (7)(C). (b) (6), (b) (7)(C) claimed that (b) (6), (b) (7)(C) was forced to quit the job, due to medical issues associated with the company failing to provide (b) (6), (b) (7)(C) with (b) (6), (b) (7)(C) right under the Break Time for Nursing Mothers requirements.

Insufficient Break Time-Section 207(r)(1)(A)

A violation occurred when the company failed to provide (b) (6), (b) (7)(C) with a reasonable break time to express breast milk for (b) (6), (b) (7)(C) nursing child. After informing Dover Manor management of (b) (6), (b) (7)(C) need to express milk, (b) (6), (b) (7)(C) was informed that (b) (6), (b) (7)(C) would need to express milk, on (b) (6), (b) (7)(C) breaks. The company provided (b) (6), (b) (7)(C) with a morning and an afternoon break, each 15 minutes long. Then (b) (6), (b) (7)(C) was given 30 minutes for lunch. (b) (6), (b) (7)(C) (supervisor), and (b) (6), (b) (7)(C) (supervisor) all confirmed that (b) (6), (b) (7)(C) was required to express milk during this time (Exhibits B-1, B-3-A to B-3-F, and B-5). The following was taken from the interview with (b) (6), (b) (7)(C) Supervisor, (b) (6), (b) (7)(C) (Exhibit B-5):

“We informed (b) (6), (b) (7)(C) could express milk only during (b) (6), (b) (7)(C) break time. At times (b) (6), (b) (7)(C) would inform us (b) (6), (b) (7)(C) needed to express milk, but it wasn't (b) (6), (b) (7)(C) break and (b) (6), (b) (7)(C) wasn't supposed to. When (b) (6), (b) (7)(C) left to express milk and it wasn't (b) (6), (b) (7)(C) break, we talked to (b) (6), (b) (7)(C) about pumping in the car to and from work, or trying to coordinate during (b) (6), (b) (7)(C) break time. I actually wrote (b) (6), (b) (7)(C) up for taking excessive breaks. (b) (6), (b) (7)(C) was given two 15 minute breaks and then a 30 minute break for lunch. (b) (6), (b) (7)(C) would go over the 15 minute breaks routinely.”

On October 20, 2014 (b) (6), (b) (7)(C) was written-up by management of Dover Manor (Exhibit D-3). This was (b) (6), (b) (7)(C) only write-up while employed at Dover Manor. On the write-up, it states that one issue (b) (6), (b) (7)(C) was written up for was for “excessive break time.” (b) (6), (b) (7)(C) supervisor, (b) (6), (b) (7)(C) stated the following (Exhibit B-1):

“We informed (b) (6), (b) (7)(C) to express milk during (b) (6), (b) (7)(C) two 15 minute breaks and (b) (6), (b) (7)(C) lunch. If (b) (6), (b) (7)(C) expressed milk during (b) (6), (b) (7)(C) break and it went over by 5 minutes, that is fine, but if it took longer than that, that is not ok. (b) (6), (b) (7)(C) has patients that need to be taken care of we can't afford for (b) (6), (b) (7)(C) to be gone excessively. The day (b) (6), (b) (7)(C) took an hour break, (b) (6), (b) (7)(C) was written up (was) because (b) (6), (b) (7)(C) took too long of a break.”

The following was taken from the interview with (b) (6), (b) (7)(C) Supervisor, (b) (6), (b) (7)(C) (Exhibit B-5):

“I expressed to (b) (6), (b) (7)(C) that due to the fact (b) (6), (b) (7)(C) was using a single breast pump, (b) (6), (b) (7)(C) should

attempt to purchase a double breast pump to speed process up. Using a single breast pump, it takes approximately 30 minutes total. It was not possible for (b) (6), (b) (7)(C) to pump milk during her 15 minute break, but (b) (6), (b) (7)(C) never expressed to me the need for more time.”

Due to the fact that the company failed to provide (b) (6), (b) (7)(C) with adequate break time, (b) (6), (b) (7)(C) stated (b) (6), (b) (7)(C) started experiencing issues with (b) (6), (b) (7)(C) health. (b) (6), (b) (7)(C) stated these issues were due to the pressure (b) (6), (b) (7)(C) was receiving from management of Dover Manor; as well as fellow employees of Dover Manor, whom were upset because they would have to assist with completing (b) (6), (b) (7)(C) workload, while (b) (6), (b) (7)(C) was out expressing milk (Exhibit B-3-A to B-3-F).

The following was taken from the interview with her Supervisor, (b) (6), (b) (7)(C) (Exhibit B-5):

“(b) (6), (b) (7)(C) really struggled with the issues of expressing milk. (b) (6), (b) (7)(C) felt like people (coworkers) were getting aggravated because (b) (6), (b) (7)(C) was taking so long to pump. They (coworkers) would have to pick up the slack because (b) (6), (b) (7)(C) took so long. I believe (b) (6), (b) (7)(C) was pumping milk three times a day. I expressed to (b) (6), (b) (7)(C) probably only needed to pump every 4 hours.”

“(b) (6), (b) (7)(C) told us (b) (6), (b) (7)(C) was going to doctor in November, prior to quitting. (b) (6), (b) (7)(C) stated (b) (6), (b) (7)(C) was having Post-Partum Depression. (b) (6), (b) (7)(C) seemed very agitated all the time. (b) (6), (b) (7)(C) felt people were attacking (b) (6), (b) (7)(C) all the time because (b) (6), (b) (7)(C) work wasn't always up to par. After this, (b) (6), (b) (7)(C) stopped showing up to work and we never heard from (b) (6), (b) (7)(C) again. I was happy (b) (6), (b) (7)(C) wanted to get help.”

Insufficient Space-207(r)(1)(B)

A violation occurred when the company failed to provide (b) (6), (b) (7)(C) with a place, other than a bathroom, that is shielded from view and free from intrusion from co-workers and the public, which may be used by an employee to express breast milk. (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) informed (b) (6), (b) (7)(C) nursing supervisors of (b) (6), (b) (7)(C) need to express breast milk for (b) (6), (b) (7)(C) nursing child. (b) (6), (b) (7)(C) stated that the supervisors stated this was ok, if completed during (b) (6), (b) (7)(C) break time, in the time prescribed for (b) (6), (b) (7)(C) break. The company failed to ever give (b) (6), (b) (7)(C) a set location where (b) (6), (b) (7)(C) could express breast milk, free of intrusion by coworkers and the public. (b) (6), (b) (7)(C) stated that when the need arose to express breast milk (b) (6), (b) (7)(C) would go to (b) (6), (b) (7)(C) car to express milk. Dover Manor stated that (b) (6), (b) (7)(C)

could use the Nurses' Station. However, it was determined that this location was not free from intrusion and nurses were constantly walking in/out of this location (Exhibits B-1, B-3-A to B-3-F, and B-5).

Retaliation-215(a)(3)

(b) (6), (b) (7)(C) stated effective October 19, 2014 Dover Manor management started taking (b) (6), (b) (7)(C) 2nd afternoon break away from (b) (6), (b) (7)(C). This investigator interviewed two individuals that worked alongside (b) (6), (b) (7)(C) but could not get confirmation that breaks were taken from any other employees (Exhibits B-2 and B-4).

(b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) started to experience medical issues, due to the fact that Dover Manor failed to meet the standards of the Break Time for Nursing Mothers requirements. (b) (6), (b) (7)(C) stated (b) (6), (b) (7)(C) contacted (b) (6), (b) (7)(C) doctor and was told there could be future medical issues; as well as pain associated with not being able to express milk. In addition, (b) (6), (b) (7)(C) stated (b) (6), (b) (7)(C) was prescribed medication from (b) (6), (b) (7)(C) doctor to deal with the issues associated from the company not meeting the requirements of the Break Time for Nursing Mothers requirements (Exhibit B-3-A to B-3-D).

Interviews with management of Dover Manor seemed to imply the company was not happy with the breaks that (b) (6), (b) (7)(C) was taking to express milk (Exhibits B-1 and B-5).

(b) (6), (b) (7)(C) stated the company was not happy with (b) (6), (b) (7)(C) expressing milk, therefore they attempted to do anything they could to get (b) (6), (b) (7)(C) to quit (b) (6), (b) (7)(C) job.

Other Information

-On December 2, 2014 the company provided this investigator with a Break Time for Nursing Policy. Dover Manor stated they will provide this policy to all employees of the company (Exhibit D-6).

-The company did not have a Nursing Mother Policy, which employees were required to follow.

They are currently developing a company policy on this issue.

-Kentucky state law Ky. Rev. Stat. § 211-755 (2006) *permits a mother to breastfeed her baby or express breast milk in any public or private location. Requires that breastfeeding may not be considered an act of public indecency, indecent exposure, sexual conduct, lewd touching or obscenity. Prohibits a municipality from enacting an ordinance that prohibits or restricts breastfeeding in a public or private place. (2006 SB 106)*

-FMLA was looked in to, but (b) (6), (b) (7)(C) did not meet the qualifications of FMLA. (b) (6), (b) (7)(C) started working for the company (b) (6), (b) (7)(C) and did not meet the hour's threshold.

FMLA

On November 26, 2014 this investigator reviewed the company's current FMLA Policy. It was determined that the current policy did not meet Wage and Hour standards. The policy was last updated in January 1, 2011. The current company policy failed to include information on Military Family Leave Entitlements (Exhibit D-4-A to D-4-F).

On December 2, 2014 the company updated their FMLA policy and the issues addressed above were addressed (Exhibit D-5-A to D-5-E).

DISPOSITION

On November 24, 2014 an initial conference was held at the employer, located at 112 Dover Drive, Georgetown, KY 40324. Present at the initial conference was Laura Shields, Director of Nursing for Dover Manor and this investigator.

At the conclusion of the initial conference, after reviewing company information and getting details from company on (b) (6), (b) (7)(C) employment history. This investigator provided the company and reviewed with the company the following: *Fact Sheet #73-Break Time for Nursing Mothers under the FLSA; Break Time for Nursing Mothers FAQ's, and Questions and Answers about the Request for Information*; all of which was taken from the DOL-WHD website. In addition, this investigator explained that per Section 215(a)(3) of the FLSA was discussed with

the employer.

This investigator explained the need to provide sufficient space to express breast feed. Ms. Shields agreed the company did not set up sufficient space to express milk. Ms. Shields was not aware that this was a requirement.

This investigator explained the need to provide sufficient break time. Ms. Shields was informed that (b) (6), (b) (7)(C) was not given sufficient time, nor was (b) (6), (b) (7)(C) was allowed to take the breaks, when the need to express milk arose.

This investigator informed (b) (6), (b) (7)(C) that Dover Manor needed to develop a Break Time for Nursing Mother policy. Ms. Shields stated the company would review the information provided by this investigator and use that to develop a company policy.

The company asked this investigator what remedies Wage and Hour would be requesting to conclude the case. This investigator replied that remedies typically include, but are not limited to, requesting a new company policy on Break Time for Nursing Mothers, employment reinstatement, lost wages and an additional equal amount as liquidated damages; as well as future compliance. However, this investigator stated at that time there were no remedies that could be given to close case. It was stated that the case file and all supporting documents would need to be fully reviewed.

(b) (7)(E)

This investigator determined the company committed violations when they failed to provide an adequate break space and adequate breaks for (b) (6), (b) (7)(C) to express milk. The issue arises, did the company force (b) (6), (b) (7)(C) from quitting (b) (6), (b) (7)(C) job, due to their failure to meet the standards of the Break Time for Nursing Mothers requirements. Health issues arose for (b) (6), (b) (7)(C), forcing (b) (6), (b) (7)(C) to quit, due to the fact that Dover Manor management failed to comply with the law.

On November 26, 2014 this investigator spoke with Ms. Shields, concerning the issues of the case. This investigator explained that (b) (6), (b) (7)(C) had since found a job, with a new company, effective November 19, 2014. This investigator explained to Ms. Shields that a settlement could be reached, if the company agreed to pay (b) (6), (b) (7)(C) two weeks of back pay, from the time (b) (6), (b) (7)(C) left the company on November 5, 2014, up until November 19, 2014 when (b) (6), (b) (7)(C) found new employment. Ms. Shields stated she would approach management with this possible settlement.

On December 1, 2014 this investigator contacted Ms. Shields over the phone. Ms. Shields informed this investigator that the company agreed to pay (b) (6), (b) (7)(C) for two weeks of back pay. She stated the company would perform the back wage calculations. The company would take the average number of hours worked and pay (b) (6), (b) (7)(C) for two weeks.

The company performed the back wage calculations and it was determined that (b) (6), (b) (7)(C) worked an average of 30.5 hours a week. (b) (6), (b) (7)(C) was paid (b) (6), (b) (7)(C) an hour (Exhibit A-1-A to A-1-H):

(b) (7)(E) = \$564.25 gross owed

On December 2, 2014 the company signed the WH-56 and Back Wage Instructions Letter. The company agreed to pay (b) (6), (b) (7)(C) by direct deposit, on the December 19, 2014 payroll.

(b) (6), (b) (7)(C) was attempted to be notified of the outcome of the case. On December 3, December 4, December 5, and December 9 this investigator left messages for (b) (6), (b) (7)(C) failed to respond to any of the messages left for (b) (6), (b) (7)(C).

Ms. Shields was informed about the possibility of CMPs.

RECOMMENDATION

(b) (7)(E) the case closed
administratively.

(b) (6), (b) (7)(C)
Investigator
December 9, 2014

<p align="center">WHISARD Compliance Action Report</p>	
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U.S. Department of Labor
Wage and Hour Division

Case ID:	1769463	Originating District:	Birmingham AL District Office
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Case ID:	1769463	Originating District:	Birmingham AL District Office
Local Filing Number:	2015-125-12133	Investigating. District:	Birmingham AL District Office
WHMIS Case Number:		Lead Investigator:	(b) (6), (b) (7)(C)
Registration Date:	08/24/2015		
Assignment Date:	11/05/2015		

<u>Employer Information</u>	
Trade Name: Shux on The Pier	Legal Name: Shux, Inc.
Address: 1 Fairhope Ave	EIN: 47-2940952
	County: Baldwin
	NAICS Code: 722110
Fairhope, AL36532	No. Of Employees: (b) (4)

<u>Employer Information</u>	
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Address: 1 Fairhope Ave	EIN: 47-2940952
	County: Baldwin
	NAICS Code: 722110
Fairhope, AL36532	No. Of Employees: (b) (4)

Investigation Information			
Period Investigated From:	07/01/2015	BNPI:	
To:	01/19/2016	Reinvestigation:	<input type="checkbox"/>
Investigation Type:	(b) (7)(E)	Recurring Violation:	<input type="checkbox"/>
Investigation Tool:	Limited Investigation	Future Compliance Agreed:	<input checked="" type="checkbox"/>
Compliance Status:	Agree to Comply	Involved in AG:	<input type="checkbox"/>

Investigation Information			
Period Investigated From:	07/01/2015	BNPI:	
To:	01/19/2016	Reinvestigation:	<input type="checkbox"/>
Investigation Type:	(b) (7)(E)	Recurring Violation:	<input type="checkbox"/>
Investigation Tool:	Limited Investigation	Future Compliance Agreed:	<input checked="" type="checkbox"/>
Compliance Status:	Agree to Comply	Involved in AG:	<input type="checkbox"/>

<u>Recommended Action:</u>			
BWFS:	<input type="checkbox"/>	RO/NO Review:	<input type="checkbox"/>
CMP:	<input type="checkbox"/>	Follow Up Investigation:	<input type="checkbox"/>
Litigation:	<input type="checkbox"/>	Other Action:	<input type="checkbox"/>
Civil Action:	<input type="checkbox"/>	Denial of Future Certificate:	<input type="checkbox"/>
Criminal Action:	<input type="checkbox"/>	BW Payment Deadline:	
Submit For Opinion:	<input type="checkbox"/>	Trailer forms attached:	<input type="checkbox"/>

<u>Recommended Action:</u>			
BWFS:	<input type="checkbox"/>	RO/NO Review:	<input type="checkbox"/>
CMP:	<input type="checkbox"/>	Follow Up Investigation:	<input type="checkbox"/>
Litigation:	<input type="checkbox"/>	Other Action:	<input type="checkbox"/>
Civil Action:	<input type="checkbox"/>	Denial of Future Certificate:	<input type="checkbox"/>
Criminal Action:	<input type="checkbox"/>	BW Payment Deadline:	
Submit For Opinion:	<input type="checkbox"/>	Trailer forms attached:	<input type="checkbox"/>

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

Total Violations Under FLSNM:	2		\$0.00
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WHISARD Compliance Action Report

FMLA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FMLA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

13 hrs. 203(s)(1)(a) and indiv cov. (b) (7)(E) did not provide reasonable break time and did not provide adequate space as required under FLSNM. FC held with Christy Gambino who ATC by locking or putting a notice on the office door when being used for FLSNM reasons and to provide reasonable break time. no apparent CL violations. Pubs: FLSA HRG, reg 516, reg 785, FS 73, 77. Recommend admin closing.

WHI Signature: _____ Date: 01/27/2016

Reviewed By: _____ Date: _____

Shux on The Pier Case ID: 1769463

Shux, Inc. Case ID #1769463

(dba) Shux on the Pier

1 Fairhope Ave

Fairhope, AL 36532

(251) 421-4554

FEIN: 47-2940952

FLSA Narrative

COVERAGE:

The subject is a corporate entity and operates as a restaurant. Gilbert R. (Rick) Gambino is the president and owns (b) of the company. The subject has only been in business since 07/2015. Gambino was considered the 203(d) employer as he sets rates of pay, schedules hours of work, hires and fires workers, has all the investment in the business and is in charge of the day to day operations.

Gambino also owns a sister corporation under the legal name of Gambino's, Inc. located at 18 Laurel Ave., Fairhope, AL, 36532, 251/990-0995. Gambino's, Inc. also operates as a restaurant under the trade name Gambino's Italian Grill and has been in business since 1976.

Both corporations meet the definition of an enterprise as they are engaged in related activities under common control for a common business purpose. The combined ADV for the past three years has been as follows:

CY 2013 \$990,000

CY 2014 (b) (4)

CY 2015 (b) (4)

The enterprise regularly employs (b) (4) workers. The subject receives office supplies, canned foods and dry goods which are manufactured in Ohio, California, New York and Idaho. All employees handle some of these goods on a daily basis. Enterprise coverage under section 203(s)(1)(a) is applicable throughout the period of this investigation. (see exhibit C-1)

Individual coverage was also determined applicable to all servers who process credit cards on a regular and recurring basis. The subject utilizes the services Heartland Payment Systems, Inc., which is located in Jefferson, IN, to process their credit card transactions. (see exhibit B-1)

The employer was not subject to the FMLA requirements as it has never employed 50 or more workers for at least 20 weeks in any calendar year. (see exhibit C-1 and D-3)

(b) (7)(E)

(see exhibit D-1)

This investigation was limited to the FLSA Section 207(r)-nursing mother requirements.

EXEMPTIONS:

Since this investigation was limited to Section 207(r), this area was not pursued in depth. There was no evidence

of any undue hardship on the employer to meet the requirements of 207(r).

Case ID #1769463

Shux, Inc.

STATUS OF COMPLIANCE:

Period of Investigation: 07/01/2015 to 01/19/2016, Limited to (b) (6), (b) (7)(C)

History: There was no record of prior investigation.

(b) (7)(E) Data: This investigation was scheduled in response to (b) (7)(E) (b) (6), (b) (7)(C) (b) (7)(E) (b) (6), (b) (7)(C) employer did not provide adequate space and a reasonable amount of time for expressing breast milk at work. (b) (7)(E) and the employer has agreed to future compliance. However, (b) (6), (b) (7)(C) no longer works for the company and could not be contacted by phone or by mail.

Section 207(r):

(1)(A): The employer failed to provide adequate space for one employee to express breast milk. The employer required the employee to use a bathroom. (see exhibit B-2)

(1)(B): The employer also failed to provide a reasonable amount of time for the employee to express milk. The

employer did not prevent her from the time but wanted to know how much time it took and told her that pumping at work was a problem, but would have to "fix it". (see exhibit B-2)

The employer has agreed to remedy the violations by either locking the upstairs door or placing a sign on the door when the room is being used by employees to express breast milk.

DISPOSITION:

This WHI held a final conference with Christy Gambino (manager) over the telephone on 01/26/2016. I explained coverage and the requirements of the Act, i.e. minimum wage, overtime, record keeping, child labor and the requirements of section 207(r). I also advised the employer that this investigation was limited to section 207(r) and that the employer was not relieved of any violations that may exist under any other provisions of the FLSA.

I explained the violation of 1) not providing adequate space and 2) not allowing employees reasonable to expressing breast milk. Gambino stated that she had only been manager for 2 months and was not aware of any employees who needed time or space to express breast milk. She stated that it may have occurred under previous management. Gambino agreed to future compliance with section 207(r) by 1) providing an adequate space and 2) allowing a reasonable amount of time for any employees having the need to express breast milk.

The FLSA HRG was provided at the initial conference. The employer was also given FS 73, FS 77, Reg. 516, Reg. 785.

The subject was not in bankruptcy or involved in any WH related lawsuits at the time of this investigation.

Shux on The Pier Case ID: 1769463

Case ID #1769463

Shux, Inc.

DISPOSITION CONT'D.:

The employer was advised of the possibility of back wages, FLSA MW/OT CMPs and liquidated damages for any future violations.

Recommendation:

(b) (7)(E) I recommend
this investigation be administratively closed with no further action.

All correspondence should be addressed to:

Mr. Gilbert R. Gambino

President

Shux, Inc.

18 Laurel Ave.

Fairhope, AL 36532

Shux on The Pier Case ID: 1769463

(b) (6), (b) (7)(C)

WHI

01/26/2016

WHISARD Compliance Action Report

U.S. Department of Labor Wage and Hour Division

Case ID: 1776164 Originating District: Raleigh NC District Office
Local Filing Number: 2016-291-00076 Investigating District: Raleigh NC District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 11/09/2015
Assignment Date: 11/09/2015

Employer Information

Trade Name: Carolina Ale House Legal Name: LM Resturants, Inc.
Address: 2240 Walnut St. EIN: 20-1546889
Crossroads Shopping Center County: Wake
Cary, NC27518 NAICS Code: 722110
No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 11/15/2015 BNPI:
To: 01/06/2016 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

FMLA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FMLA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

No investigtn conducted-Outreach only: FLSNM: (b) (6), (b) (7)(C) (b) (7)(E) ER RT provide adequate space for nusing mothers. ER rectified by designating media room for use. Mothers given approved time & privacy; ER compliance verified by (b) (6) was not identified as (b) (6) to ER; ER currently ensures designation of private space for nursing mothers. Pending RO approval to close per DD; RO: conclude w/no violations, as ER was never advised of (b) (7)(E) Rec admin closure.

WHI Signature: _____ Date: 02/05/2016

Reviewed By: _____ Date: _____

Carolina Ale House
2240 Walnut St.
Cary, NC 27518
EIN: 20-1546889

This investigation was initiated as the result of a complaint.

COVERAGE:

Subject firm is a full-service restaurant located in Cary, NC. The subject firm is one of 4 restaurants in the Triangle, NC area under the L M Restaurant Corporation. The Corporate office is located at 6510 Chapel Hill Road, Ste 200, Raleigh, NC 27607. The firm is owned and operated by its, Lou Moshakos. Mr. Moshakos is a 3(d) employer who is responsible for the day to day operations of L M Restaurants, Inc. All employees of the establishment were covered on an enterprise basis under Section 3(s)(1)(a) for the entire investigative period, as the firm's ADV has exceeded (b) (4) for the past 2 years. In addition, individual coverage is applicable for the employees who processed credit card sales, and handle reservations and orders via the internet. See exhibit C-1-3. This investigation is limited to the allegation under FLSNM only, and is limited to the period of (b) (7)(E) (11/15/2015 to 01/06/2016).

Scope of Investigation: This investigation was limited to the provisions under FLSNM, and (b) (7)(E) period of 11/15/2015 to 01/06/2016.

Investigative History: FLSA Investigation covered 07-07-2008 through 07-06-2010. Concluded 07-21-2010. No violation.

MODO: Raleigh DO is the MODO (multi-establishment). (b) (7)(E) (exh. D-1); .

Period of Investigation: 11/15/2015 to 01/06/2016

EXEMPTIONS: Exemptions under Regulations 541 were not addressed in this limited investigation.

STATUS OF COMPLIANCE:

*A formal investigation was not conducted as (b) (6), (b) (7)(C) in the investigation. (b) (6), (b) (7)(C) requested that the WHI not address the issue of FLSNM specifically as (b) (6), (b) (7)(C) would automatically be identified. The investigation notes that no contact was ever made with the District Manager of this subject firm. The WHI instead made contact with the corporate office (Raleigh) only, and held an outreach conference with the Corporate HR Manager, Lisa Hammond. WHI discussed the general provisions of FLSA and FMLA, with specific reference to the new components under both FLSA and the FLSNM. WHI mailed the HRG, Regs. 785, 778 and 541 and FMLA. Upon direction of the RO and DD, this case is concluded as 'No Violation'. See exh. D-2-3.

This investigation was (b) (7)(E) (b) (6), (b) (7)(C) (b) (7)(E) the subject firm refused to accommodate nursing mothers with a designated

and private space in order to express milk. See WH-3 and exh. B-1. (b) (6), (b) (7)(C) explains that the subject has attempted to comply with the Nursing Mothers provisions by allowing the mothers to take bathroom breaks for this purpose. However, (b) (6), (b) (7)(C), (b) (7)(E) the cameras in the bathrooms prevents privacy. (b) (6), (b) (7)(C) has stressed anonymity as (b) (6), (b) (7)(C), and does not wish (b) (6), (b) (7)(C)

A general contact was made with HR Director, Lisa Hammond. WHI explained that (b) (6), (b) (7)(C) was assigned to check the compliance needs of the corporation and determine if training materials were needed. WHI advised that new provisions had been incorporated in FMLA and inquired as whether the firm was aware of those provisions. WHI also addressed the new FLSNM provisions and inquired as to whether or not the subject was aware of this provision. Ms. Hammond stated that she frequently visits the DOL website, and is knowledgeable of the basic provisions of FLSA. She also stated that she is aware of the FLSNM provision. She stated that all 5 restaurants in the NC area, are advised to accommodate the nursing mothers by ensure they have a designated private spot for nursing. The WHI notes that specific reference to (b) (7)(E) in this issue was not disclosed.

Ms. Hammond stated that although she was able to access the WHD provisions via internet, she would like any information WHI could provide, as she was fairly new to her position. WHI concluded the discussion by advising Ms. Hammond that (b) (6), (b) (7)(C) would send a PWC disk which (among other Acts) included training on FLSA, FMLA and FLSNM. WHI also promised to send copies of Regs. 541 and 785, as this was also briefly discussed. WHI added that (b) (6), (b) (7)(C) would also include copies of the new FMLA brochure on Military Leave, as well as the Fact Sheet on FLSNM (exh C-1-2). The subject was never advised of an investigation of her firm, and the specific (b) (7)(E) was not disclosed as (b) (6), (b) (7)(C) (as the issue had been resolved to (b) (6), (b) (7)(C) satisfaction (exh. B-1)).

(b) (6), (b) (7)(C) has since notified the WHI that the subject has cleaned out the restaurant's media room, and has designated this space for nursing mothers. (b) (6), (b) (7)(C) states that the room ensures privacy for the 2 nursing mothers at this restaurant.

Violations:

Section 6 - Minimum Wage: No Violations reported by (b) (6), (b) (7)(C)

Section 7 - Overtime: No Violations reported by (b) (6), (b) (7)(C)

Section 11 - Record keeping: No violation reported by (b) (6), (b) (7)(C)

Section 12 - Child Labor: No Violations reported by (b) (6), (b) (7)(C) and no violations disclosed via preliminary information. Alcohol permit prohibits the employment of minors under the age of 18.

FMLA - Corporate HR confirms coverage; describes policies in compliance with Act.

FLSNM - Compliance declared by subject firm, and confirmed by (b) (6), (b) (7)(C)

DISPOSITION:

(b) (6), (b) (7)(C) (b) (7)(E) . However, the subject has voluntarily come in to compliance in this area. (b) (7)(E) , case is concluded with no violations cited.

(b) (6), (b) (7)(C)

Wage & Hour Investigator
2/5/2016

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1779855 Originating District: Miami FL District Office
Local Filing Number: 2016-249-19517 Investigating District: Miami FL District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 12/21/2015
Assignment Date: 12/21/2015

Employer Information

Trade Name: Publix Super Markets, Inc. - Store 620 Legal Name: Publix Super Markets, Inc.
Address: 11977 Southern Blvd. EIN: 59-0324412
County: Palm Beach
NAICS Code: 445110
West Palm Beach, FL33411 No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 11/03/2015 BNPI:
To: 12/21/2015 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

11 hrs. Ent cov. Limited investigation (b) (7)(E) - nursing mother not provided with intrusion-free area to express breast milk. (b) (7)(E); co-workers twice entered area while (b) (7)(E) was expressing. FC 12/23/15 w/ Store Mgr. Jules Verchp, Asst. Store Mgr. Jerry Leeks and HR Sr. Investigator Christopher Tissot. ATC by providing different area that is intrusion-free to (b) (7)(E) Pubs: HRG and FS 73. Recommend close.

WHI Signature: _____ Date: 01/06/2016

Reviewed By: _____ Date: _____

FLSNM NARRATIVE REPORT

This is an investigation regarding the compliance or non-compliance of Publix Super Markets, Inc. with its obligations under section 207(r) of the FLSA. That section provides:

“Reasonable break time for nursing mothers

(1) An employer shall provide—

(A) a reasonable break time for an employee to express breast milk for (b) (6), (b) (7)(C) nursing child for 1 year after the child's birth each time such employee has need to express the milk; and

(B) a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk.”

COVERAGE

Business Information: The employer is a large super market chain that, according to its website, has more than 1,100 stores in Alabama (61 stores) Florida (769 stores) Georgia (183 stores) North Carolina (11 stores) South Carolina (54 stores) Tennessee (38 stores). Its website states that it also has eight distribution centers and ten manufacturing centers in Florida and Georgia. (b) (6), (b) (7)(C) worked at Store 620.

The corporate headquarters of the employer are located at 3300 Publix Corporate Parkway, Lakeland, FL 33811. The complainant works at a Publix store that is located at 11977 Southern Boulevard, Royal Palm Beach, FL 33411.

The ADV of the business is reported on the employer's website to have exceeded (b) (4) in 2014. Its ADV is therefore sufficient for 3(s)(1)(A) coverage for the 2015 investigation period with which this case is concerned. In addition, Publix engages in interstate commerce by operating in several states.

Enterprise coverage is therefore present for the investigation period.

MODO: The Tampa DO is the MODO. (b) (7)(E)
(Exhibit D-1).

Misclassifications: None disclosed.

Period of Investigation: November 3, 2015 to December 21, 2015. The investigation addressed the issue of one nursing mother, who returned to work (b) (6), (b) (7)(C) following the eight-week maternity leave (b) (6), (b) (7)(C) took after the birth of (b) (6), (b) (7)(C) child (b) (6), (b) (7)(C).

Investigative Tool: Limited investigation regarding (b) (6), (b) (7)(C) nursing mother break time (b) (7)(E)

FMLA Coverage: Publix Super Market employed fifty or more workers during this or the preceding calendar year. It is a covered employer.

EXEMPTIONS

WHI reviewed only whether (b) (6), (b) (7)(C) is exempt and found that no exemption applies to (b) (6), (b) (7)(C) is paid (b) (6), (b) (7)(C) per hour and (b) (6), (b) (7)(C) is a nursing mother who gave birth less than one year ago. (Exhibit B-1).

STATUS OF COMPLIANCE

History: There is an extensive investigation history regarding this employer. WHI did not locate any cases that addressed break times for nursing mothers, however.

Reason for Investigation: The case was initiated (b) (7)(E) the employer failed to provide (b) (6), (b) (7)(C), a nursing mother, with an area that is free from intrusion from co-workers in which to express breast milk. (b) (7)(E)

(b) (6), (b) (7)(C) Data:

(b) (6), (b) (7)(C)

WHI advised (b) (6), (b) (7)(C) of the results of this investigation on December 23, 2015.

Section 6 – Minimum Wage: A thorough review of the employer's compliance with the FLSA's minimum wage requirements was not undertaken but no violations were evident during a review of the employer's profile pay period records. The store at which (b) (6), (b) (7)(C) worked had (b) (6) employees during the profile pay period and the payroll records exceeded 300 pages. The profile pay period is not attached as an exhibit due to its voluminous nature.

Section 7 – Overtime: A thorough review of the employer's compliance with the FLSA's overtime requirements was not undertaken but no violations were evident during a review of the employer's profile pay period records.

Section 7(r) – Intrusion-free area to express: A violation was disclosed. Although the employer provided (b) (6), (b) (7)(C) with a room that locks, instructed (b) (6), (b) (7)(C) to place a “Do Not Disturb” sign on the door, and told (b) (6), (b) (7)(C) co-workers not to enter the room when it was being used, co-workers intruded on (b) (6), (b) (7)(C) on two occasions although (b) (6), (b) (7)(C) had followed the employer's instructions. (Exhibit B-1). On the second occasion, (b) (6), (b) (7)(C) was fully exposed to the intruding co-worker while (b) (6), (b) (7)(C) was expressing. (b) (6), (b) (7)(C) was also visible to other co-workers and store customers although (b) (6), (b) (7)(C) does not know if anyone but the intruding co-worker saw (b) (6), (b) (7)(C).

(b) (6), (b) (7)(C) suffered no monetary loss because of this violation.

Section 11: Record Keeping: This case was limited to the issue of break time for nursing mothers. No determination was made regarding whether the employer complies with all record keeping requirements of the FLSA.

Section 12: Child Labor: This case was limited to the issue of break time for nursing mothers. No determination was made regarding whether the employer complies with all child labor requirements of the FLSA. However, the employer provided WHI with a list of minors who work at this store and their position. The employer also assured WHI that minors are employed only as baggers and checkers. The employer further assured WHI that although the store's deli includes a meat slicer and that fried foods are prepared at the store, no minor is allowed to work in those areas of the store or to have anything to do with the meat slicer or fryer. The employer also assured WHI that the hazardous occupations that are set forth in the FLSA are known to it and that no minor is allowed to engage in any work that constitutes one. (Exhibit D-2).

FMLA The employer's FLMA policy was not reviewed because of the limited nature of the investigation.

DISPOSITION

A final conference was held by telephone on December 23, 2015 with Christopher Tissot (Human Resources Investigator), Store Manager Jules Verchp and Assistant Store Manager Jerry Leeks.

WHI reviewed with the employer's representatives the reason for the investigation and the facts that had been reported. No one disputed that there had been intrusions when (b) (6), (b) (7)(C) was expressing breast milk.

Mr. Verchup told WHI that although attempts had been made to provide a private and intrusion-free area in which (b) (6), (b) (7)(C) could express, the intrusion had occurred because of "human error." He stated that he has taken the following steps, all of which he has communicated to (b) (6), (b) (7)(C), and to which (b) (6), (b) (7)(C) agreed, to ensure that no intrusions occur in the future:

- (b) (6), (b) (7)(C) will only express milk in the manager's office, which is located behind the customer service desk and is not accessible to the general public.
- (b) (6), (b) (7)(C) will be allowed to access that office whenever needed. If the manager is working in the office, he will vacate it within five minutes of being advised by (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) needs to use it.
- The only store employees who have keys or access to keys to the manager's office are the manager and assistant manager. No one else will have access to keys to the office.

- (b) (6), (b) (7)(C) will lock the door when (b) (6), (b) (7)(C) uses the office and the employer provided (b) (6), (b) (7)(C) with a sign that states “Do Not Disturb, Do Not Knock” that (b) (6), (b) (7)(C) will place on the door when (b) (6), (b) (7)(C) uses it.
- Employees who have access to the area in which the manager's office is located have been instructed not to attempt to enter the office or to or knock on the door when the sign is in place.

WHI also reviewed the FLSA's requirements regarding minimum wage, overtime for non-exempt employees, record keeping requirements and child labor. Mr. Tissot told WHI that the employer pays at least the minimum wage for all hours worked and additional half-time for overtime to non-exempt employees. He also told WHI that they maintain time records that comply with the FLSA. Finally, he told WHI that the company is aware of the restrictions on the work that can be performed by persons under the age of eighteen and that they comply with the FLSA's requirements regarding child labor. Mr. Tissot told WHI that Publix will continue to comply with the FLSA regarding all these matters.

Specifically, the employer agreed to:

Provide a reasonable break time for (b) (6), (b) (7)(C) to express breast milk for one year after the child's birth each time such employee has need to express the milk.

Provide a place – specifically, the manager's office – which will be shielded from view and free from intrusion from coworkers and the public, that may be used by the complainant to express breast milk.

Continue to pay all non-exempt employees a rate of pay that is at least the federal minimum wage of \$7.25 per hour.

Continue to pay all non-exempt employees time and a half their regular rate for all hours worked that exceed forty per workweek.

Continue to comply with all FLSA record keeping requirements.

Continue to comply with all FLSA child labor requirements.

CMPs: The employer was advised at the final conference that CMPs could be imposed for future monetary or child labor violations.

Publications provided: HRG; Fact Sheet 73 (Break Time for Nursing Mothers).

Recommendation: I recommend that the file be closed.

Correspondence:

Christopher Tissot
Publix Super Markets, Inc.
140 Stoneridge Drive
Suite 430
Columbia, SC 29201

(b) (6), (b) (7)(C), WHI

WHISARD Compliance Action Report

U.S. Department of Labor Wage and Hour Division

Case ID: 1783689 Originating District: Miami FL District Office
Local Filing Number: 2016-249-00153 Investigating District: Miami FL District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 02/09/2016
Assignment Date: 02/11/2016

Employer Information

Trade Name: Cracker Barrel Legal Name: CBOCS Inc.
Address: 1960 NW 150th Avenue EIN: 62-0812904
County: Broward
NAICS Code: 72211
Pembroke Pines, FL 33028 No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 02/18/2014 BNPI:
To: 02/17/2016 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Full Investigation Future Compliance Agreed: ☒
Compliance Status: Compliance (no violations found) Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	2	\$0.00	\$0.00	\$0.00	\$0.00	

FMLA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FMLA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

15.25hrs: Ent/Indv COV established. (b) (7)(E) ER failed to provide adequate space for nursing mothers. Sec. 7/PPACA viol found - ER failed to provide adequate/private space free from intrusion. FC held 03/04/16 at est., w/GM W. Navus. ER ATC. RECOMMEND NFA.

WHI Signature: _____ Date: 03/14/2016

Reviewed By: _____ Date: _____

FLSA Patient Protection & Affordable Care Act Narrative

Cracker Barrel Old Country Store, Inc.
DBA: Cracker Barrel
1960 NW 150th Ave.
Pembroke Pines, FL 33028
(954) 704-4020
EIN: 62-0812904

Local Filing #: 2016-249-00153
Case ID: 1783689

Contact: Walter Navas, General Manager

COVERAGE

Reason for Investigation: The full investigation conducted under the Patient Protection and Affordable Care Act (PPACP), was initiated (b) (7)(E) (b) (6), (b) (7)(C)

(b) (7)(E) the firm failed to provide nursing mothers a private place to express milk. (b) (6), (b) (7)(C) (b) (7)(E) the firm provided an area, however, the room was not free from interruptions by coworkers. (b) (7)(E)

MODO: The Nashville, TN District Office is the MODO as the firm's corporate office is located in Lebanon, TN. (b) (7)(E)

(see exhibits D-1-1 to D-1-3).

Period of Investigation: 02/18/2014 to 02/17/2016

Sec. 3(s)(1)(A)(ii): The firm has more than two employees who handle goods that have moved in interstate commerce. Goods include food and gift items manufactured outside the State of Florida (see exhibits C-2-1). The firm's total annual dollar volume is as follows: 2014 - (b) (4); 2015 - (b) (4) (see exhibits C-2-1). Based on the above, Enterprise coverage has been established.

Nature of Business: Cracker Barrel Old Country Store, Inc., dba: Crack Barrel Old Country Store – Unit #268 is one of 57 full service restaurant and gift shops operating in 28 States across the U.S. According to information received from Ms. Brandi McGee, Compliance Manager and www.sunbiz.org, the firm (a publicly traded company) was incorporated in the State of TN on 03/13/1985, and is managed by a Board of Directors Thomas Barr, James W. Bradford, Sandra Cochran, Glenn Davenport, Richard Dobkin, Norman Johnson, William McCarten, Coleman Peterson and Andrea Weiss (see exhibits C-2-3).

Section 203(D) Employer: Mr. Walter Navas meets the definition of 3(d) employer under the FLSA. Mr. Navas makes all executive and managerial decisions for the firm in relation to the employees (see exhibit C-1-1).

FMLA: The firm is subject to the Act as they employ 50 or more employees in 20 or more workweeks in the current or preceding calendar year (see exhibits A-0-1 to A-0-49).

EXEMPTIONS

541.1 applicable to:

Walter Navas, General Manager – Mr. Navas is paid a guaranteed weekly salary of (b) (6), (b) (7)(C) /52wks), is responsible for the hiring and firing of employees and directing their work. Mr. Navas primary duty is the management of the restaurants and its employees (see exhibits A-0-48 and C-1-3).

(b) (6), (b) (7)(C), Associate Manager – (b) (6), (b) (7)(C), is paid a guaranteed weekly salary of (b) (6), (b) (7)(C) / 52wks), is responsible for the hiring and firing of employees and directing their work. (b) (6), (b) (7)(C) primary duty is the management of the restaurants and its employees (see exhibit A-0-47 and C-1-3).

STATUS OF COMPLIANCE

There were no monetary violations found as a result of this investigation.

Prior History: None found.

Section 206 - Minimum Wage: No violation found. A review of the firm's records and statements received from the workers determined employees were paid in excess the minimum wage for all hours worked (see exhibits A-0-1 to A-0-49, B-1 and B-2).

Section 207 -Overtime/Nursing Mothers: Violation found. A tour of the private space used by nursing mothers and statements received from employees (see exhibits B-1 and B-2), determined that the firm failed to provide nursing mothers an adequate space free from intrusions by other coworkers.

During the Initial Conference a tour of the establishment was conducted. The private space used by a nursing mother(s) was checked to ensure it allowed sufficient room for the nursing mother and that it was shielded from view from all co-workers. The area was also checked to ensure that there would be privacy from intrusion. The space was found to be adequate, however, did not contain a secure lock for the door, nursing mothers could enable while using the space.

Section 211 - Record Keeping: No violation found. The employer maintained accurate records of hours during the investigative period (see exhibits B-1 and B-2).

Section 212 - Child Labor: No violation found. Information received through observations, employee statements and the firm's records revealed that the firm did not employ workers under the age of 18 (see exhibits B-1, B-2, C-1-4 and E-1-9).

Section 825 – Family Medical Leave Act: No violation found. The firm maintains a policy outlining the requirements of the Act (see exhibits C-3-1 to C-3-5).

DISPOSITION

A final conference was held at the establishment on 03/04/2016, with General Manager Walter Navas. WHI (b) (6), (b) (7)(C) represented DOL. An overview of the requirements under the Patient Protection and Affordable Care Act (PPACA), were discussed with Mr. Navas.

Regarding PPACA): Mr. Navas was advised that the firm was required to provide a space,

other than a bathroom, free from intrusion from coworkers or the public. Mr. Navas was advised that as a result of the investigation, the firm failed to provide a private area free from interruptions. Mr. Navas stated that the firm was aware of the requirements for nursing mothers and that the firm allowed multiple break time whenever they need it. Mr. Navas stated that the break time is paid and that there are currently no restrictions on the amount of break time allowed for expressing milk. Mr. Navas stated that the firm understood that the space must be private and free from intrusion and since the initial conference, a lock was installed in the room to ensure nursing mothers their privacy.

Recommendation: (b) (7)(E)

It is recommended that this case be administratively closed.

Publications Provided: HRG, Fact Sheet 73, Parts 516, 541, 778, 785, and Child-Labor Bulletin 101. SBREFA notification was provided via Fact-Sheet No. 44.

Responsible Party:

Crack Barrel
ATTN: Brandi McGee
305 Hartmann Drive
Lebanon, TX 37087

Prepared by:

(b) (6), (b) (7)(C), WHI

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1785245 Originating District: Raleigh NC District Office
Local Filing Number: 2016-291-00297 Investigating District: Raleigh NC District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 02/29/2016
Assignment Date: 04/13/2016

Employer Information

Trade Name: McDonald's Legal Name: McDonalds Corporation, LLC
Address: 1107 West Roosevelt Blvd EIN: 36-2771363
County: Union
NAICS Code: 722211
Monroe, NC28110 No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 11/01/2015 BNPI:
To: 05/31/2016 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Full Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

FMLA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FMLA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

*65.75 HRS, (b) (7)(E) violates FLSA-not providing adequate space, delays (b) (7)(E) ret., (b) (7)(E) ER ATC.
 (b) (6) Noti., Rec. Admin. Closing (b) (7)(E)

Pubs: HRG, Posters FMLA, Polygraph, Rights, 1312, 1281, 1261, 1262, 825, Fact Sheets, 21, 22, 23, 28D, 30, 36, 43, 73, 77A

WHI Signature: _____ Date: 07/15/2016

Reviewed By: _____ Date: _____

McDonald's Case ID: 1785245

McDonalds Corporation, LLC
Dbas: McDonalds

Case ID: 1785245

McDonalds
1107 West Roosevelt Boulevard
Monroe, N.C. 28110

Melissa Peedin
Telephone: 704-289-4978

Roy Smith
District Manager
Telephone: 336-970-3595

Lynn Fortune
Human Resources Consultant
Raleigh Region
Telephone: 704-564-9660

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Federal Tax ID#: 36-2771363

Dun and Bradstreet Number: 213 965-ER provided incomplete number.

COVERAGE

FLSA NARRATIVE

CASE ASSIGNMENT INFORMATION: This case was initiated by (b) (7)(E) (b) (6), (b) (7)(C)

(b) (7)(E) the firm did not provide an adequate space to express breast milk, that the firm has not allowed (b) (6), (b) (7)(C) to express breast milk when needed, that the firm has sent (b) (6), (b) (7)(C) home when (b) (6), (b) (7)(C) needed to express breast milk instead of allowing (b) (6), (b) (7)(C) reasonable break time when needed at work and that the firm has retaliated against (b) (6), (b) (7)(C) for exercising (b) (6), (b) (7)(C) rights under FLSANM.

The subject firm is a fast food restaurant located in Monroe, North Carolina. This location is a corporate store that is open 24/7 and serves breakfast, lunch and dinner. The subject firm prepares and serves, hamburgers, sandwiches, French fries, deserts, salads, biscuits and soda to their customers.

The subject firm has a General Manager, three shift managers, approximately (b) (6), (b) (7)(C) crew members and is part of the Raleigh region for McDonalds Corporation, LLC. The crew members are cashiers in the front of the restaurant work in the drive through and cook and one crew member works in maintenance. Many of the crew members are trained to work in more than one area. This location is overseen by a District Manager who manages five stores in North Carolina, one in Monroe and four in Charlotte.

The subject firm's business model rarely schedules crew members to work more than 40 hours a week.

The subject firm stipulated to coverage at the initial conference and provided the WHI with a written stipulation in subsequent correspondence (Exhibit D-6). The subject firm has an ADV of more than \$500,000 and employs more than 50 employees at that location. There are at least fifteen employees on each shift depending on sales volume.

The subject firm's District Manager, Roy Smith, represented the firm during initial and final conferences and had the authority to bind the company on matters of significance; thus Mr. Smith and the firm are 3 d employers.

The subject firm also has numerous employees in their corporate office who communicate regularly via email and telephone with the firm's regional employees; thus the firm had more than two employees engaged in interstate

commerce.

As such, all employees were covered under enterprise coverage 3 (s) (1), (A) during the investigative period.

(Exhibits C-1-C-1-I, C-1-L-C-1-M).

INDIVIDUAL COVERAGE: Because Enterprise coverage was established Individual coverage was not pursued.

SCOPE: This was a full investigation of the subject firm's Monroe location under the Fair Labor Standards Act (FLSA) and Fair Labor Standards Act Nursing Mother Provision (FLSANM).

PERIOD OF INVESTIGATION: November 1, 2015-May 31, 2016.

HISTORY: There is no investigative history for this location of the firm. There is investigative history for the firm throughout the U.S. (Exhibits D-18-D-18-A).

MODO: The firm has numerous locations throughout the U.S. and numerous locations throughout the world and the Chicago, Illinois District Office is the MODO.

(b) (7)(E)

(Exhibits D-0-A-D-0-A-O).

No Section 16 (b) actions are pending against this location. (Exhibit C-1).

Exemptions

The following 13 (a) (1) exemption was deemed applicable during the period of investigation; as follows:

541.100, General Manager, Melissa Peeden

Ms. Peeden is paid more than \$455 a week and receives the same salary each week regardless of the number of hours she works. She has significant input into hiring and firing decisions and can discipline employees on an as needed basis. Her primary duty in the day to day management of the firm by ordering products, processing employee paperwork and payroll, hiring staff as needed and ensuring customer satisfaction.

(Exhibits B-5-B-5-F, C-1-L-C-1-M).

STATUS OF COMPLIANCE

(b) (6), (b) (7)(C) **Data:** (b) (6), (b) (7)(C) (b) (7)(E) The subject firm had not provided an adequate/private place for (b) (6), (b) (7)(C) to express breast milk initially and (b) (6), (b) (7)(C) was delayed while needing to express breast milk on several occasions. (b) (7)(E) No back wages were calculated on (b) (6), (b) (7)(C) behalf. A message has been left for (b) (6), (b) (7)(C) to notify (b) (6), (b) (7)(C) of the investigative results.

(Exhibits B-1-B-10-C, E-1-E-1-C, D-6-D-13-A).

PAY PRACTICE: The firm pays its employees weekly on Tuesday with direct deposit or a pay card. Taxes are taken from the employees' paychecks. The subject firm gives its employees shirts, pants, a pair of shoes and a hat before they begin working. The subject firm's work week is Sunday through Saturday. The pay card has ATM fees if an employee chooses to withdraw cash. The pay card can be used at most of the same locations a debit card can be used.

The employees are scheduled using an automated system that calculates their availability, their efficiency rating and their sales along with the store needs to determine the number of hours scheduled each week.

The employees clock in and out on a POS system available on each cash register. The POS system allows employees to print out a slip after each shift that shows their hours worked. If an employee forgets to clock in and/or out on a shift they contact a shift manager or the general manager will adjust their hours worked in the system based on their conversation. These adjustments are posted outside the office door for each employee to sign prior to payroll being processed. The general manager prepares the payroll and sends to the regional office for processing.

The crew members receive an unpaid 30 minute break with each shift over four hours. All employees receive a free meal consisting of a sandwich, a side and a small drink on their shift regardless of the number of hours worked on each shift.

The employees' hours worked have been recorded accurately and they have been paid for all their hours worked. The subject firm's lowest hourly rate is (b) (4) an hour. When an employee works more than 40 hours a week they are paid time and one half of their hourly rate for all hours worked over 40 in that work week.

The subject may pay its employees incentive bonuses based on the store's production per company policy. If bonuses are paid and overtime is worked the bonuses will be calculated into the regular rate in order to calculate overtime.

The general manager is the only salaried employee at the subject firm's location.

The subject firm hires 16 and 17 year olds at that location. They are cashiers and there are no hazardous occupations at the subject firm.

Employee hours are scheduled using a computer based scheduling system that calculates the labor needed based on business needs/sales volumes and the employee's availability, sales and efficiency ratings.

(Exhibits B-1-B-10-C, C-1-C-1-I-C-1-N, D-1-A-D-1-E, D-16).

Nursing Mothers

Prior to January 2016, an employee was expressing breast milk in the break room using and was shielded from view by a full bread rack. (Exhibit B-5-B-5-F, B-7-B-7-F, B-10-B-10-B, D-13-A).

After January 2016. The subject firm has two locations where employees can express breast milk. They are the employee crew (break) room and the office. There is a partition that can cover either the office or the crew room entrance from the inside. There is no lock on the partition. The subject firm supplies a refrigerator in the crew room for nursing mothers to store their breast milk. The crew room has a chair and table for employee use and the office has a desk and chair for employee use. There is also a table and comfortable chair.

If the crew room is unavailable employees can use the office as needed. Employees may have to wait to express breast milk until other employees are finished using the break room during their shifts.

The camera in the crew room has been disabled and the camera in the office is covered with a piece of paper when needed. There is a "Do Not Disturb Sign" for the partition when it is in use.

Crew (Break) Room and Measurements, width 74.5'" and height 134'"

Office Measurements, width 35.75'" width and 85'" height

Partition

The partition measures 42.5'" width and 72'" height and can be placed inside the office or the break room door to block the entrance, the partition does not come up to the ceiling, on WHI's last site visit the partition had to be placed in front of the office due to items placed in the office. The partition is stable.

(Exhibits B-2-B-10-C-1-O, D-1-F-D-1-G, D-6-D-6-A, D-7, D-11-D-12-C).

VIOLATIONS: No violations were disclosed under the minimum wage, overtime, record keeping or child labor provisions of the Act. Violations were disclosed under the FLSANM provision of the Act.

SECTION 6: MINIMUM WAGE: A violation was not disclosed for the following reason:

The subject firm's payroll records and employee interviews indicate that the employees made more than \$7.25 an hour for all hours worked in each work week.

(Exhibits A-0-1-A-0-1-BB, B-1-B-1-B-10-C, C-1-I-C-1-M).

SECTION 7: OVERTIME: A violation was not disclosed for the following reason:

The subject firm paid overtime at time and one half for all hours worked over 40 in a work week.

(Exhibits A-0-1-A-0-1-BB, B-1-B-1-B-10-C, C-1-I-C-1-M).

SECTION 7: NURSING MOTHERS: A violation was determined for the following reasons.

The subject firm did not provide an adequate/private space for (b) (6), (b) (7)(C) to express breast milk.

The subject firm had (b) (6), (b) (7)(C) wait to express breast milk after (b) (6), (b) (7)(C) indicated that (b) (6), (b) (7)(C) needed to pump until employees left the break room.

(Exhibits B-5-B-5-F, B-9-B-9-F, B-10-B-10-C).

SECTION 11: RECORD KEEPING: A violation was not disclosed for the following reasons:

The subject recorded all hours worked accurately.

The subject firm recorded all unpaid meal periods and breaks accurately.

(Exhibits A-0-1-A-0-1-BB, B-1-B-1-B-10-C, C-1-I-C-1-M).

SECTION 12: CHILD LABOR: A violation was not disclosed for the following reasons:

The subject firm did not employ anyone under the age of 16.

The subject firm employs 16 and 17 year olds as cashiers in the front of the store. They take customer orders and fulfill the orders as needed.

There are no hazardous occupations at the subject firm's location.

(Exhibits A-0-1-A-0-1-BB, B-1-B-1-B-10-C, C-1-I-C-1-M).

OTHER LAWS: FMLA- The firm is a covered employer and has a (b) (6), (b) (7)(C) FMLA policy. An FMLA poster

was not visible at the subject firm's location. No violation was cited because an FMLA poster was posted during the initial conference on May 25, 2016.

(Exhibits D-1-I, D-1-J).

DISPOSITION

The WHI began the investigation by interviewing (b) (6), (b) (7)(C) and cold calling the employer on May 10, 2106. The WHI met briefly with the General Manager, Melissa Peedin and spoke with the District Manager, Roy Smith, who referred (b) (6), (b) (7)(C) to the regional human resources department in Raleigh. Counsel, Brandon Shelton, contacted the WHI to discuss the case and schedule the initial conference, tour of the facility and employee interviews.

The initial conference was held on May 25, 2016 and subsequent employee interviews were conducted on May 30, 2016.

Counsel insisted on being present during the interviews the District Manager, the General Manager and the Shift Manager. He would not allow the employees to sign the interview statements unless he could review the statements first. The WHI did not provide him with the statements for review and they remain unsigned.

(Exhibits B-1-B-9-F, C-1, C-1-E-C-1-N, D-3-D-3-K, D-4-D-5).

The WHI determined that (b) (6), (b) (7)(C) had numerous discipline issues for insubordination, no calls, no shows and the District Manager indicated that (b) (6), (b) (7)(C) would have been terminated (b) (7)(E)

When the District Manager learned that (b) (6), (b) (7)(C) needed to express breast milk he immediately purchased a refrigerator and a partition that could block either the crew (break) room or office door from view. He also disabled the security camera in the crew (break) room for privacy. He established a pumping schedule with (b) (6), (b) (7)(C) although (b) (6), (b) (7)(C) would be allowed to deviate from the schedule as needed.

(b) (6), (b) (7)(C) had questions about the number of hours that (b) (6), (b) (7)(C) was scheduled for and the District Manager explained that the schedule is computer based on stores needs based on sales and employee sales, availability and efficiency ratings. He explained that labor costs in the store were too high for the sales volume and that employee hours had been cut as a result. He also adjusted (b) (6), (b) (7)(C) availability based on (b) (6), (b) (7)(C) requests including coming in 30 minutes later on the morning shift.

Prior to that meeting with the District Manager (b) (6), (b) (7)(C) had been written up twice and although the District

Manager cannot physically remove them from the system he told (b) (6), the write ups would be ignored so (b) (6), could start over fresh.

The WHI made arrangements on May 25, 2016 at the initial conference to obtain the additional information required to complete the investigation. The WHI interviewed as many English speaking employees as were available during (b) (6), site visits and was able to interview employees who worked with (b) (6), (b) (7)(C) on first shift so the WHI could address (b) (6), (b) (7)(C) (b) (7)(E)

(Exhibits B-1-B-9-F, C-1, C-1-E-C-1-N, D-3-D-3-K, D-4-D-5, D-6-D-10-K, E-1-E-1-C).

Some of the information was not provided to the WHI such as the requested payroll information so the WHI could compare (b) (6), (b) (7)(C) hours to (b) (6), colleague's hours. The WHI also requested additional payroll information to spot check records that was never provided. The WHI did not continue to pursue this payroll information since (b) (6), was able to obtain the necessary information through employee interviews and information obtained from the District Manager and General Manager.

(b) (6), (b) (7)(C) also contacted the WHI with additional (b) (7)(E) which were addressed during the investigation. The WHI continued to contact Counsel regarding the outstanding information from the initial conference and the information needed to address (b) (6), (b) (7)(C) additional (b) (7)(E). The WHI was also presented with evidence that (b) (6), (b) (7)(C) had contacted the subject firm's Human Resources Hotline on a number of occasions and that the subject firm had been working with (b) (6), to address (b) (6), concerns.

(Exhibits E-1-E-1-C).

The WHI addressed each of (b) (6), (b) (7)(C) (b) (7)(E) during the investigation:

(b) (6), (b) (7)(C) (b) (7)(E) (b) (6), initially had to pump behind a bread rack in the break room. (b) (7)(E)

(Exhibits B-5-B-5-F, B-10-B-10-C, E-1).

(b) (6), (b) (7)(C) (b) (7)(E) (b) (6), was told to wait to express (b) (6), breast milk until employees had finished eating and left the break room. (b) (7)(E)

(Exhibits B-5-B-5-F, B-10-B-10-C, E-1).

(b) (6), (b) (7)(C) (b) (7)(E) (b) (6), (b) (7)(C) had been written up for an issue with a customer due to exercising (b) (6), (b) (7)(C) rights under FLSANM. (b) (7)(E) (b) (6), (b) (7)(C) was written up for insubordination for the manager for refusing coaching and sent home. The customer (b) (6), (b) (7)(C) was working with also called the subject firm's complaint hotline.

(Exhibits B-7-B-7-F, D-9-M, D-10-D-10-D, E-1).

(b) (6), (b) (7)(C) (b) (7)(E) (b) (6), (b) (7)(C) hours had been cut since (b) (6), (b) (7)(C) began exercising (b) (6), (b) (7)(C) rights under FLSANM. (b) (7)(E) (b) (6), (b) (7)(C) The subject firm's computer based scheduling system schedules employees based on efficiency ratings, the areas an employee is trained to work in (b) (6), (b) (7)(C) is trained as a cashier and in drive thru-no cooking), availability, sales and store labor needs based on stores sales volume. (b) (6), (b) (7)(C) reduced (b) (6), (b) (7)(C) availability from (b) (6), (b) (7)(C) initial hire date and has only worked 86 hours and 17 minutes of her 132 scheduled hours from March 16, 2016-May 31, 2016.

(Exhibits B-5-B-10-C, D-6-A, D-7, D-9-D-9-H, D-15, E-1-E-1-C).

(b) (6), (b) (7)(C) (b) (7)(E) (b) (6), (b) (7)(C) had been sent home one day due to exercising (b) (6), (b) (7)(C) rights under FLSANM. (b) (7)(E) (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) had not worn (b) (6), (b) (7)(C) hair up as required by company policy. (b) (6), (b) (7)(C) was offered a rubber band to pull (b) (6), (b) (7)(C) hair back by a colleague. (b) (6), (b) (7)(C) refused and went home per witness statements.

(Exhibits B-5-B-5-C, B-8-B-8-C, B-9-B-9-F, D-7, E-1-E-1-C).

(b) (6), (b) (7)(C) (b) (7)(E) other employees entered the break room while (b) (6), (b) (7)(C) was expressing breast milk. (b) (7)(E) (b) (6), (b) (7)(C) by employee interviews.

(Exhibits B-1-B-4-B-B, B-6-B-8-B, B-9-E, E-1-E-1-C).

(b) (6), (b) (7)(C) (b) (7)(E) the General Manager watched (b) (6), (b) (7)(C) on the office camera while (b) (6), (b) (7)(C) was in the break

room expressing breast milk and told (b) (6), (b) (7)(E) to "hurry up." The subject firm denied this (b) (7)(E) (Exhibits D-E-1-E-1-C).

(b) (6), (b) (7)(C) (b) (7)(E) (b) (6), (b) (7)(C) was sent home to pump. (b) (7)(E) (b) (6), (b) (7)(C) opted to go home instead because (b) (6), (b) (7)(C) would only have 20 minutes left on (b) (6), (b) (7)(C) shift.

(Exhibits B-5-B-5-F, B-9-E, D-9-I).

The WHI asked Counsel if (b) (6), (b) (7)(C) prior to the final conference was considered for a raise after six months and no answer was ever provided.

The WHI provided the ADD with (b) (6), (b) (7)(C) investigative results including the narrative, a summary of (b) (7)(E) and findings, pictures of areas to express breast milk, copies of (b) (6), (b) (7)(C) disciplinary records and employee interviews. (b) (7)(E)

(Exhibits B-1-B-10-C, D-6-D-13-A, E-1-E-1-C).

The final conference as held on Counsel's office on July 13, 2106 with WHI (b) (6), (b) (7)(C) Counsel Brandon Shelton and District Manager, Roy Smith. The WHI reviewed the 541.100 exemptions, hours worked, record keeping, overtime, child labor, garnishments, polygraph protection and FLSAN. The WHI also mentioned that while this was a full investigation of the subject firm's Monroe location the emphasis was on FLSANM.

Counsel indicated that he thought that under the FLSA break time should be paid if it is 20 minutes or less and unpaid if it is 21 minutes or more. The WHI indicated that (b) (6), (b) (7)(C) had been trained that deductions should be 30 minutes or more but that there were no enforcement issues because WHD can only enforce the current federal minimum wage for all hours worked. Since the employees made at least (b) (4) an hour and did not work over 40 hours a week there were not likely to be any monetary violations and that none had been found in the time records provided for the complainant so WHD will not pursue the issue.

The WHI explained that State Wage and hour laws may apply including promised wages and that when federal and

state law conflict the more stringent of the two laws applies. The WHI advised of FOIA rights.

The WHI explained that the subject firm had been charged with violations under FLSAN due to not providing an adequate privacy when the nursing mother was expressing breast milk when they used a bread rack to shield (b) (6), (b) (7)(C) from view. The WHI also explained that the subject firm cannot ask the mother to wait until the other employees have left the break room before (b) (6), (b) (7)(C) is allowed to express (b) (6), (b) (7)(C) breast milk.

The WHI then discussed what arrangements may be made if another nursing mother needs to express breast milk. The District Manager indicated that he would obtain a second partition and create a box to cover the camera in the office so both the crew (break) room and the office can be used to express milk as needed.

The WHI then indicated that (b) (6), (b) (7)(C) (b) (7)(E)

The District Manager was unsure if (b) (6), (b) (7)(C) had been given a raise and could not speak to the facsimile (b) (6), (b) (7)(C) sent the WHI on July 8, 2016 that the General Manager had completed for DSS to subsidize (b) (6), (b) (7)(C) child care. The information provided to DSS only indicated an estimated number of hours and not a promise of a certain number of hours scheduled.

The District Manager did not indicate that sales volumes were up and (b) (6), (b) (7)(C) was being scheduled for 25-30 hours a week and had not had any additional discipline issues. He also reiterated that the ratings (b) (6), (b) (7)(C) received of two for being a cashier in front and three in the drive thru were excellent.

He also indicated that his goal was to keep (b) (6), (b) (7)(C) as an employee as long and (b) (6), (b) (7)(C) wanted to work for the subject firm. The Monroe location also has a new General Manager who is aware of (b) (6), (b) (7)(C) need to express breast milk. (b) (6), (b) (7)(C) has not been given any information on the investigation so (b) (6), (b) (7)(C) would not be treated with any bias. The District Manager is being promoted and his replacement has been briefed regarding the investigation. The District Manager indicated that he would review the nursing mother accommodations with both the new District Manager and the new General Manager again including what was discussed at the final conference with the WHI.

The subject firm's District Manager agreed to continuing compliance with the FLSA by:

- Continuing to record all employee hours worked accurately.
- Continuing to pay for all employee hours worked.
- Continuing to pay the proper overtime hourly rate when applicable under the FLSA.
- Continuing to adhere to the child labor provisions of the FLSA.
- Allowing nursing mothers to take as many breaks as needed for as long as needed to express their breast milk.

The subject firm's District Manager agreed to future compliance with the FLSANM by:

1. Asking all employees on a shift when a nursing mother is working and expressing breast milk to take their breaks in the lobby of the restaurant and not the crew (break) room so the nursing mother does not have to wait to express breast milk.
2. Placing a box over the camera in the office so it can be easily covered if a nursing mother needs to express breast milk in the office.
3. Obtaining an extra partition so both the office and crew (break) room can be used if more than one nursing mother is employed at the same time.
4. Ensuring a "Do Not Disturb Sign" has been placed on the partition covering the crew (break) and office door.

(Exhibits C-2-C-2-A).

The WHI has reviewed the subject firm's scheduling procedures with (b) (6), (b) (7)(C) but has not given (b) (6), any other investigative results. The WHI is awaiting (b) (6), (b) (7)(C) return call.

CIVIL MONEY PENALTIES (CMP's) –N.A.

RECOMMENDATION: This case can be administratively closed (b) (7)(E)

PUBLICATIONS: HRG, 1330, 1321, 1281, 1330, 1261, 1262, 21, 22, 23, 28, 28D, 30, 43, 44, 73, 77A, Posters-FMLA, Rights, Polygraph Protection.

Correspondence sent to:

**Roy Smith
District Manager
McDonalds Corporate
1107 West Roosevelt Road
Monroe, N.C. 28110**

Please Copy Counsel on Correspondence

Brandon M. Shelton, Esq.

McDonald's Case ID: 1785245

Ogletree, Deakins, Nash, Smoak and Stewart, P.C.
201 South College Street, Suite 2300
Charlotte, NC 28244

Respectfully Submitted,

(b) (6), (b) (7)(C), Wage Hour Investigator July 15, 2016

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1787776 Originating District: Columbia SC District Office
Local Filing Number: 2016-159-01124 Investigating District: Columbia SC District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 03/25/2016
Assignment Date: 03/31/2016

Employer Information

Trade Name: Champs Sports
Address: 1057 Broad St.

Sumter, SC29150

Legal Name: Foot Locker Retail, Inc.
EIN: 13-1988404
County: Sumter
NAICS Code: 45399
No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 05/10/2014 BNPI:
To: 04/30/2016 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FMLA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FMLA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

Subject cov. under 203 (s)(1)(A)(i)(ii) all EEs cov. on enterprise basis. FC on 04/19/2016 w/owner. Viol. Sec. 7 (r) Break times for Nursing Mothers. ER ATC.

Publications: FLSA; Handy Reference Guide; Minimum Wage Poster; MSPA Poster, WH-134; Interpretative Bulletin, Part 785: Hours Worked Under the Fair Labor Standard Act of 1938, as amended.

WHI Signature: _____ Date: 05/16/2016

Reviewed By: _____ Date: _____

Foot Locker Retail, Inc. d.b.a. EIN# 13-1988404
Champs Sports Case ID# 1787776
1057 Broad Street
Sumter, SC 29150
Tel. (941) 741-7528

COVERAGE

Reason for Investigation:

This investigation was initiated (b) (7)(E) (b) (6), (b) (7)(C) (b) (7)(E)
(b) (6), (b) (7)(C) was not allowed to use the store office to express milk and instructed to use the store bathroom.
(See WH-3)

Employer Info:

Champs Sports is a division of Foot Locker Retail, Inc. Foot Locker Retail, Inc., is a wholly owned subsidiary of Foot Locker, Inc., Foot Locker, Inc., is a publicly traded corporation.

Coverage:

ER ADV for 2015 is (b) (4), 2014 is (b) (4) and 2013 is (b) (4) and has two or more employees handling, selling tennis shoes, t-shirts and baseball hats and other goods that have been moved in or produced for commerce. All employees of the establishment were covered on an enterprise basis under Section 3(s). (See exhibit C-4)

Section 3(d) Employer:

(b) (6), (b) (7)(C) is the Store Manager and (b) (6), (b) (7)(C) is involved in the daily operations of the business, specifically supervising, monitoring attendance, counseling, hiring and firing employees. (See exhibits B-1- through B-3)

FMLA:

The Firm, Champs Sports is a private retail store selling tennis shoes, t-shirts and baseball hats and other goods. It has (b) (4) employees at its location in the Sumter, South Carolina Mall and over (b) (4) employees

nationwide. The Act applies to this employer, since private sector establishments are covered by the Act if they employ 50 or more employees for at least 20 workweeks in the current or preceding calendar year at one or more worksites within 75 miles radius. (See exhibits A-0 through A-0-r)

Period of Investigation: 05/10/2014 through 04/30/2016

MODO: MODO contact was made with the Tampa, Florida District Office and (b) (7)(E) [REDACTED]. No special instructions given. (See exhibits D-0 through D-0-h)

WHISARD indicates that the subject firm has never been investigated by the Columbia, SC DO.

EXEMPTIONS

EXEMPTIONS: 13(a)(1)

541-101 applicable to Avis Robertson, Store Manager

(b) (6), (b) (7)(C) is paid a fixed salary of (b) (6), (b) (7)(C) bi-weekly. (b) (6), (b) (7)(C) is engage in the daily operation of the establishment and directs the work of two or more full-time employees. (b) (6), (b) (7)(C) has the authority to hire or fire other employees. (See exhibits A-0 and B-1 through B-3)

STATUS OF COMPLIANCE

This investigation is limited to “Break Time for Nursing Mothers under the FLSA” The law became effective when the Affordable Care Act was signed March 23, 2010.

During the fact finding portion of the investigation WHI found evidence that while the store Manager was on duty (b) (6), (b) (7)(C) will only allow the nursing mother to express milk in the store rest room (See exhibits D-1 & D-1-a) and refused to allow the employee to use the store office for that purpose (See exhibit D-1-b). At any other time when the store manager was not on duty and the assistant manager or district manager were covering the store, then the nursing mother was allowed to use the store office to express milk.

Section 206: Minimum Wage: No Violation Found

All non-exempt employees were paid at least the Federal minimum wage of \$7.25 for all hours worked.

(See exhibits A-0 through A-0-r)

Section 207: Overtime: No Violation Found

All non-exempt employees were paid time and half overtime rate of their regular rate for hours over 40 in the work week (See exhibits A-0 through A-0-r)

Section 211: Record Keeping: No Violation Found

The WHI's walk-through inspection at the initial conference confirmed that posting requirements (FLSA) were met by the employer.

Section 212: Child Labor: No violation Found

A visual inspection of the work place and employee interviews shows that no minors were working at this establishment.

DISPOSITION

On April 18, 2016 WHI (b) (6), (b) (7)(C) meet with Gabriel Salazar the HR Director for Champs Sports who flew in from Florida and with Esteban Figueroa the District Manager for Champs Sports in South Carolina. The Store Manager (b) (6), (b) (7)(C) was not present.

Mr. Salazar explained that Champs Sports has taken the necessary steps to correct the situation for the nursing mother. He explained that the store office will be available any time the nursing mother needs to express milk. (See exhibit D-1-b) Mr. Salazar added that his management team will educate his management staff on the provisions Section 7(r), specifically making them aware that the rest room will not be utilize at any time as a location for a nursing mother to express milk.

WHI conducted a tour of the store office and the store rest room and other areas. Photos were taken for the record. (See exhibits D-1 through D-1-b)

WHI then explained the requirements of section 7(r) in detail.

Section 15(a)(3) of the Act was explained to ER. He was advised that the Act prohibits retaliation by

employers against employees for asserting rights under the FLSA.

Recommendation: Recommend that the case be administratively closed with no further action.

IRS Referral: IRS referral not-recommended.

(b) (6), (b) (7)(C) Contact:

(b) (6), (b) (7)(C) was telephonically contacted via telephone on 05/05/2016 via. (b) (6), (b) (7)(C) expressed some concerns about having difficulty with (b) (6), (b) (7)(C) work schedule and feels that the store manager is beginning to take action to make things difficult for (b) (6), (b) (7)(C) to coordinate schedules on (b) (6), (b) (7)(C) two jobs.

WHI contacted the HR Director Mr. Salazar and explained the provisions of Section 15(a)(3) of the Act. Mr. Salazar stated that he was going to contact Mr. Figueroa the District manager on what's happening at the store. Mr. Salazar was advice that WHD will take action if retaliation takes place.

Prepared and submitted by

(b) (6), (b) (7)(C)

Wage & Hour Investigator
Columbia, SC DO
May 5, 2016

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1799047 Originating District: Atlanta GA District Office
Local Filing Number: 2016-111-29955 Investigating District: Atlanta GA District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 08/10/2016
Assignment Date: 08/11/2016

Employer Information

Trade Name: Flowers Bakery Legal Name: Flowers Bakery of Suwannee, LLC
Address: 2900 Rolling Pin Ln EIN: 58-2480300
County: Gwinnett
NAICS Code: 31181
Suwanee, GA30024 No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 03/19/2016 BNPI:
To: 08/11/2016 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	
Total Violations Under FLSNM:		2					\$0.00

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

19.75 hrs Lim Inv. Enterp. Coverage (b) (7)(E) failure to Breaks and Space Violations Substantiated FC held on 08/23/2016 with Atty ER ATC no backwages due. Recommend case is close (b) (7)(E)

WHI Signature: _____ Date: 08/29/2016

Reviewed By: _____ Date: _____

Flowers Bakery Case ID: 1799047

**03/198/Flowers Bakery of Suwanee, LLC.
DBA Flowers Bakery
2900 Rolling Pin Lane
Suwanee, GA 30024
Tax ID# 58-2480300
File # 1799047**

FAIR LABOR STANDARDS ACT OF 1938 (FLSA) NARRATIVE REPORT

COVERAGE

Flowers Bakery of Suwanee, LLC, is one of 49 bakeries in 18 states, (b) (4)

(b) (4) Flowers Bakery is a (b) (4) business that operates in Suwanee, GA and employs (b) (4) employees at this location.

All the employees are covered on enterprise basis because the enterprise exceeded the criteria required under the Act of a \$500,000 Annual Dollar Volume (ADV) and have at least two full-time employees that handle, sell or otherwise work on goods or materials that have been moved in or produced for commerce Such as computers, industrial machinery and bake goods. Thus, §3(s)(1)(A) coverage exists for the two year investigative period. [See Exhibit(s) C-1, 2]

Coverage is asserted under section 207(r), as the enterprise employs more than 50 employees and is therefore subject to the Patient Protection and Affordable Care Act (PPACA) which took effect on March 23, 2010. (P.L.111-148). As such, the Law amended Section 7 of the FLSA. Section 4207: Reasonable break time for Nursing Mothers.

The investigation was for the period from the 03/19/2016 to 08/11/2016. The investigation was limited to compliance under section 207(r) for one employee, (b) (6), (b) (7)(C), and the period in question from 03/19/2016 through 08/11/2016.

This is a Multi-Unit Employer (MUER) and the Georgia DO is the MODO. (b) (7)(E)

[See exhibit D-0]

EXEMPTIONS

Section 2013(b)1: is not applicable the complainant is an hourly employee

Section 207(r)3: is not applicable the employer employs more than 50 employees.

STATUS OF COMPLIANCE

History: There is not history on WHISSARD for this employer.

Investigation of the subject firm was initiated (b) (7)(E) (b) (6), (b) (7)(C) a nursing mother (b) (7)(E) the employer did not provide adequate space and reasonable breaks time to express breast milk.

(b) (7)(E) The violations did not yield any backwages for (b) (6), (b) (7)(C) has been notified of the results of the investigation. [See Exhibit(s) B-1]

(b) (6), (b) (7)(C) (b) (7)(E); the investigation determined:

(b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) works the third shift from 8pm to 8am and that the employees were given three (3) 15 minutes and one (1) 20 minutes paid breaks during their shift. The break time is not set and the times depend on the production line. The 20 minutes break is generally given at in the middle of the shift.

Upon (b) (6), (b) (7)(C) return to work, (b) (6), (b) (7)(C) requested breaks and space for the purpose of expressing milk for (b) (6), (b) (7)(C) new born. (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) and the Human Resource Manager discussed the breaks and space needs. (b) (6), (b) (7)(C) stated that at the time, (b) (6), (b) (7)(C) thought, first time expressing milk, that and additional 10 minutes added to the breaks (b) (6), (b) (7)(C) already gets should be enough for expressing milk. [See Exhibits

D-5]

(b) (6), (b) (7)(C) later approached (b) (6), (b) (7)(C) supervisor and Human Resources Manager to let them know that (b) (6), (b) (7)(C) needed more time because the time being allowed was not sufficient. (b) (6), (b) (7)(C) said the (b) (6), (b) (7)(C) had to combine (b) (6), (b) (7)(C) breaks that (b) (6), (b) (7)(C) often used for eating, warming up (b) (6), (b) (7)(C) food, using restrooms and drinking water with packing and unpacking (b) (6), (b) (7)(C) equipment to express milk, cleaning the equipment and the time to express milk.

(b) (6), (b) (7)(C) also stated that (b) (6), (b) (7)(C) needed to do this every 3 hours and because the breaks are not set (b) (6), (b) (7)(C) sometime will go 4-5 hours without a break depending on the production line. After expressing this to them (b) (6), (b) (7)(C) was not allowed any additional time, because (b) (6), (b) (7)(C) runs a station in the line of production that is not operate disrupt the production line.

(b) (6), (b) (7)(C) was also allowed to use a conference room for the purpose. Investigation determined did not provide reasonable privacy nor met the requirements per Fact Sheet 73. The location provided was a conference room that was used to conduct meetings at least once a month and was not available when needed in order to meet the statutory requirement. (b) (6), (b) (7)(C) stated that one time (b) (6), (b) (7)(C) was told that (b) (6), (b) (7)(C) needed to hurry or be out of the conference room by certain time because there was a scheduled meeting with a superintendent. [See exhibit B-1]

The space provided was not shielded from view, and free from any intrusion from co-workers and the public. The investigations revealed that (b) (6), (b) (7)(C) was allowed access to the general location where the conference room is at it by one of the supervisors. However, the conference room door was not shielded from view and was not equipped with a lock. The supervisor, maintenance personnel and upper management had all access to the general area where that conference room was ad they could had walk into the area and see (b) (6), (b) (7)(C) expose have they walk into the room while (b) (6), (b) (7)(C) was using it. [See exhibit D-2, 3]

Violations under the FLSA and PPCA: Limited to (b) (6), (b) (7)(C) only

Section 206 (Minimum Wage-MW): Total Backwages computed \$0.00 to 0 EE's. The investigation disclosed no minimum wage violations. The employer met the minimum wage obligation compensating employee at a regular hourly rate of no less than \$7.25.

Section 207 (Overtime-OT): Total Backwages computed \$0.00: The investigation disclosed violations. Employer failed to comply with the provisions set forth under section 207(r)(A) and (B), for Nursing Mothers. Employer failed to provide (b) (6), (b) (7)(C) adequate space and reasonable time for the purpose of expressing milk.

Computations – None

Section 2011 (Recordkeeping): The investigation disclosed no record keeping violations. The required FMLA, EPPA and FLSA posters were posted at the establishment. The employer kept accurate records of hours worked. [See Exhibit(s) D-2]

Section 2012 (Child Labor): There were no child labor violations. The employer does not hire minors to work at his establishment. .

DISPOSITION

On 8/11/2016 an initial conference was held with Mr. Jason Barrow, Human Resources Manager, represented the Company. This investigator represented the U. S. Dept. of Labor WHD, Atlanta District Office. The meeting was held at the establishment, which is located at 2900 Rolling Pin Lane, Suwanee, GA, 30528. This Investigator explained the purpose of the investigations and the process for completing the investigation.

On 8/18/2016 during a call with the Attorney concerning violations and future compliance, the attorney stated that the company was restructuring and offered a severance package to several employees and (b) (6), (b) (7)(C) accepted (b) (6), (b) (7)(C). He was told the employer could not retaliate because someone filed a complaint or cooperated with and investigation. The attorney said that that was in the work for some time.

On 8/22/2016 this investigator call (b) (6), (b) (7)(C) to confirm the restructuring and (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) knew of other employees that were offered the same deal. This investigator explained to (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) did not have to accept the deal if (b) (6), (b) (7)(C) did not wanted to and that the employer could not retaliate because someone filed a complaint or cooperated with and investigation. (b) (6), (b) (7)(C) said that (b) (6), (b) (7)(C) understood and that (b) (6), (b) (7)(C) voluntarily accepted (b) (6), (b) (7)(C) deal.

On 8/23/2016 a pre final conference was held with Mr. C. Garner Sanford, Attorney, represented the Company. This investigator represented the U. S. Dept. of Labor WHD, Atlanta District Office. The meeting was held via telephone.

During the conference, this investigator discussed the investigation findings per requirements set forth in Fact Sheet 73, and, the violations found under 207(r)(1). This investigator told the attorney that the employer failed to provide;

- (A); a reasonable break time for an employee to express breast milk for her nursing child for 1 year after the child's birth each time such employee has need to express the milk; although the human resources tried to make the accommodations at the time of the request, but failed to adjust the accommodations once (b) (6), (b) (7)(C) told to him that (b) (6), (b) (7)(C) needed more time to express (b) (6), (b) (7)(C) milk. During the initial conference Mr. Barrow acknowledge that (b) (6), (b) (7)(C) had express to him that the breaks were not enough but said that he had already made the accommodations and that (b) (6), (b) (7)(C) was changing it know. [See exhibit B-1, D-5]

This investigator told him that the regulations do not make reference to how many or the length of the breaks and it may vary from person to person but that the mother should be given a reasonable amount of breaks and as long as needed to accomplish the task. He expressed his frustration that the nursing mother gets to decide the length and frequency of the breaks.

This investigator told the attorney that (b) (6), (b) (7)(C) said that needed 30 minutes break every 3 hours in order to express (b) (6), (b) (7)(C) milk and ask him if the company would agree to make the accommodations. He stated that he would contact the employer and tell me what they would do in that regard.

- (B); a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk.
This investigator told Mr. Barrow that the conference room that was provided was not shielded from view and did not have a lock mechanism at the door. Mr. Barrow said that he would have maintenance personnel install a window blind and a lock to the door the same day.

This investigator confirmed with (b) (6), (b) (7)(C) that the employer had corrected the problem by installing a lock and blind to the room. The employer agreed to comply from now on.

On 8/29/2016 Mr. C. Garner Sanford, Attorney contacted this investigator and stated that the employer have agreed to comply in the future agreed to accommodate the breaks for (b) (6), (b) (7)(C) and agreed to comply in the future. That there were going to accommodate the breaks as requested for (b) (6), (b) (7)(C) However, as a result of the deal (b) (6), (b) (7)(C) was not longer working for the company.

On 08/24/2016, this investigator contacted (b) (6), (b) (7)(C) to let (b) (6), (b) (7)(C) know that the employer agreed to comply in the future. (b) (6), (b) (7)(C) confirmed that (b) (6), (b) (7)(C) no longer was working for the company.

Publications: The following publications were provided to the employer at the final conference: Fact sheet #73 and Section 7(r) of the FLSA-Break Time for Nursing Mothers Provision.

Recommendation(s):

Close case (b) (7)(E)

Publication(s):

The following publications were provided to and/or reviewed with the employer: *ESA Fact Sheets #73*

Future correspondence should be sent to:

C Garner Sanford, Jr., Attorney
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
191 Peachtree Street, N.E., Suite 4800
Atlanta, GA 30303

(b) (6), (b) (7)(C)

Investigator, Wage & Hour

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1807426 Originating District: Raleigh NC District Office
Local Filing Number: 2017-291-00102 Investigating District: Raleigh NC District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 11/23/2016
Assignment Date: 11/23/2016

Employer Information

Trade Name: Cleveland High School
Address: 1892 Polenta Road

Clayton, NC27520

Legal Name: Cleveland High School
EIN: EIN Missing
County: Johnston
NAICS Code: 09740
No. Of Employees: 0

Investigation Information

Period Investigated From: 02/07/2017 BNPI:
To: 02/07/2017 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☐
Compliance Status: Not Applicable Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

Case closed as (b) (7)(E) failed to contact WHI. Several attempts made to contact (b) (7)(E) by phone and mail. (b) (7)(E) decided to close case (b) (7)(E)

WHI Signature: _____ Date: 02/07/2017

Reviewed By: _____ Date: _____

Case ID: 1807426
Cleveland High School
1892 Polenta Road
Clayton, NC 27520
EIN:EIN Missing

FLSA Narrative

COVERAGE:

This investigation was initiated (b) (7)(E) (b) (6), (b) (7)(C)

Subject firm is a School. All employees of the establishment were covered on an enterprise basis under Section 3(s) for the entire investigative period. The firm's ADV is unknown. The period of investigation is from 02/07/2017 to 02/07/2017.

EXEMPTIONS: None Claimed; None Applicable. None explored due to limits of investigation.

STATUS OF COMPLIANCE:

Section 6 - Minimum Wage
Not explored due to limits of investigation.

Section 7 - Overtime
Not explored due to limits of investigation.

Section 11-Recordkeeping
Not explored due to limits.

Section 12 - Child Labor
Not explored due to limits.

DISPOSITION:

WHI (b) (6), (b) (7)(C) spoke to (b) (6), (b) (7)(C) at the beginning of the investigation. (b) (6), (b) (7)(C) was reluctant to give (b) (7)(E) with WHI. (b) (7)(E)

WHI tried to contact (b) (6), (b) (7)(C) for an interview and to obtain (b) (7)(E) (b) (6), (b) (7)(C) did not return WHI calls. WHI (b) (6), (b) (7)(C) also texted (b) (6), (b) (7)(C) e-mail address as

requested so (b) (6), (b) (7)(C) could send (b) (6), (b) (7)(C) the information of the person who WHI needed to contact at the school. No responses were received. A letter was sent on January 24th, 2017 to (b) (6), (b) (7)(C) requesting that (b) (6), (b) (7)(C) makes contact with WHI (b) (6), (b) (7)(C) by Friday, February 3, 2017. (b) (6), (b) (7)(C) did not contact WHI (b) (6), (b) (7)(C) by such date.

On February 7, 2017, WHI (b) (6), (b) (7)(C) (b) (7)(E)

WHI (b) (6), (b) (7)(C)

February 7, 2017

WHISARD Compliance Action Report

U.S. Department of Labor Wage and Hour Division

Case ID: 1809133 Originating District: Atlanta GA District Office
Local Filing Number: 2017-111-30423 Investigating District: Atlanta GA District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 12/14/2016
Assignment Date: 12/14/2016

Employer Information

Trade Name: Sheltering Arms Longview Center Legal Name: The Sheltering Arms
Address: 3833 Longview Dr. EIN: 58-0566236
County: Douglas
NAICS Code: 624410
Douglasville, GA30135 No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 09/01/2016 BNPI:
To: 12/20/2016 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☒
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	2	\$0.00	\$0.00	\$0.00	\$0.00	

Total Violations Under FLSNM: 4 \$0.00

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

31.25 Hrs (b) (7)(E) under sec 207(r); Subject (b) (4) non-profit preschool with 15 locations throughout Atlanta, GA, cov asserted on an enterprise basis under sec 203(s)(1)(B); one EE cov under sec 207(r); ER in vio of sec 207(r) failed to provide nursing mother space & time to express milk, no back wages due employees were not deducted pay for breaks, FC held on 1/25/17 with HR Norman Hill and Monica Safford, ER agreed to make changes for compliance, FS 28D, 578, 785, 541,778 provided to ER

WHI Signature: _____ Date: 01/26/2017

Reviewed By: _____ Date: _____

FLSA NARRATIVE

Case id: 1809133

Case number: 2017-111-30423

Employer name: Sheltering Arms Longview

Legal Name: The Sheltering Arms, Inc.

Mailing address: 385 Centennial Olympic Park Dr NW Atlanta, GA 30313

Physical address: 3833 Longview Dr Douglasville, GA 30135

Contact person and title: Monica Safford (HR Generalist)

Phone number: 404-523-2845

Fax number: 470-399-5285

Federal id: 58-0566236

DUNS#: 010116937

Cage:

COVERAGE:

The subject firm above is a 501c3 nonprofit community early care and education center that prepares young children to succeed in school and that is accessible to all, regardless of family income. (See Exhibit(s): C-4, C-5-C-5-b).

The subject firm is governed by a board of directors. Members of the board are Michael Smith, Bennie Boswell, Jr, Elizabeth Richards, Jeff Kammerer, Pegui Mariduena, Martha Abbott-Shim, Kathy B. Ashe, Chad Aron, Laurie Benezra, W.J. Blane, Ashley brightwell, Gerry Carson, Helen Cease, Nathan Collett, Wendy Conover, Blair Curtis, Mark Dvorak, Anthony Embrey, Steve Floyd, Martha Taylor Greenway, Cathy Hilton, Stephanie James, Donna Lowry, Jill MacRae, Canditra McLemore, John Mears, Leona Rapelye, Lovette Russell, Caryn Schilstra, Anne Carson, Stiles Conrad, Robert Gunn, Jr, Janet Johnson, and Virginia Williams. (See Exhibit(s): C-3).

Subject firm operates at fifteen locations throughout the Metro Atlanta Region. The headquarters is located at 385 Centennial Olympic Park Dr NW Atlanta, GA 30313. The firm hires employees to work as administrative assistants, lead teachers, receptionists, and team leads. The firm has (b) (4) employees.

The firm is covered on an enterprise basis under Section 203(s)1(B) of the FLSA. The 1972 Amendments to the Fair Labor Standards Act specifically extend coverage of the Acts provisions to preschools and daycare centers as covered “enterprises,” regardless of whether public or private or operated for profit or not for profit. The firm collects fees for services provided on a sliding fee scale. Based on this information all employees are covered under an enterprise basis. (See Exhibit(s): C-1-C-2-b).

The Annual Dollar Volume of sales (ADV) for this enterprise has been:

2013	(b) (4)
2014	
2015	

(See Exhibit(s): C-3-C-5-t).

(b) (7)(C) met the definition of a “3(d) employer”. (b) (7)(C) hired and fired employees, set rates of pay, and assigned employees to work in different sections of the school. (b) (7)(C) is also responsible for the day to day operations of the subject firm. (See Exhibit(s): B-1-B-4-a, C-5-C-5-b).

The period of investigation is from 9/1/16 to 12/20/16.

The investigation was limited to compliance under section 207(r) for two employees, (b) (7)(C), and the period in question from 9/1/16 to 12/20/16.

A history search was performed in WHISARD and no previous case history was found.

The employer has fifteen locations. A MODO request was submitted due to the establishment having multiple locations throughout the state. (b) (7)(E)

(Exhibit D-1-D-1e).

EXEMPTIONS:

Per aforementioned, exemptions were not explored.

STATUS OF COMPLIANCE:

This case was assigned (b) (7)(E) (b) (7)(C), (b) (6) claims (b) (7)(C) was not provided sufficient space and sufficient time to express breast milk. (See CA Information).

(b) (7)(C), (b) (6) (b) (7)(E) .

(b) (6), (b) (7)(C) at Sheltering Arms Longview location. (b) (6), (b) (7)(C) has been employed with the firm (b) (6), (b) (7)(C) returned to work and explained to (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) would need time to express breast milk during work hours. Management granted the request to accommodate (b) (6), (b) (7)(C) by allowing (b) (6), (b) (7)(C) to take multiple breaks throughout the day to express breastmilk.

(b) (6), (b) (7)(C) at Sheltering Arms Longview location. (b) (6), (b) (7)(C) has been employed with the firm since (b) (6), (b) (7)(C) child was ten months old. (b) (6), (b) (7)(C) explained that (b) (6), (b) (7)(C) would require break time to express breastmilk. Management granted the request to accommodate (b) (6), (b) (7)(C) by allowing (b) (6), (b) (7)(C) to take multiple breaks throughout the day to express breastmilk.

(b) (6), (b) (7)(C) used the family support office, director's office, meeting room, breakroom, and clinic. The time required to express breast milk would range from thirty to forty-five minutes. (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) would like to express breast milk at 0930, 1200, and 1500. Due to supervision requirements of the school (b) (6), (b) (7)(C) did not express breast milk at the same time each day. On or around 11/15/16 (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) met with the Director (b) (6), (b) (7)(C). During this meeting (b) (6), (b) (7)(C) requested that (b) (6), (b) (7)(C) keep (b) (6), (b) (7)(C) nursing break less than thirty minutes. (b) (6), (b) (7)(C) stated that it would be difficult to perform the task in less than thirty minutes.

(b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) only uses the breakroom to express breastmilk because the meeting room is always occupied, and (b) (6), (b) (7)(C) was never told about the family support office. When (b) (6), (b) (7)(C) uses the breakroom the door is not locked and other employees are free to enter. (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) has a device that covers her up. (b) (6), (b) (7)(C) asked (b) (6), (b) (7)(C) to keep it under twenty minutes, because other teachers are covering for (b) (6), (b) (7)(C).

(b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) regularly uses the family support office, director's office, meeting room, breakroom, and clinic. There have been multiple times when (b) (6), (b) (7)(C) was interrupted by coworkers and parents that are picking up their children. (b) (6), (b) (7)(C) stated that the car seats are kept in the breakroom and parents would often rush into the room to grab the car seat interrupting the nursing mothers break. When using the meeting room (b) (6), (b) (7)(C) was often interrupted by other employees who needed access to the room. (See Exhibits D-3-D-7)

It was determined that the meeting room, breakroom, and director's office were inadequate and did not provide reasonable privacy nor met the requirements per Fact Sheet 73. (See Exhibits D-5-D-6).

Section 206 - Minimum Wage:

No minimum wage violations found, employees were paid in accordance with Section 206 of the FLSA.

Section 207 – Overtime:

No overtime violations found, employees were paid in accordance with Section 207 of the FLSA.

Record Keeping: Section 211:

No record keeping violations found, employer maintained records in accordance with Section 211 of the FLSA.

Section 212 - Child Labor:

There were no child labor violations per review of records and statement under Section 212.

CMP's:

CMP's were not assessed for the establishment.

Liquidated Damages:

Liquidated Damages were not assessed for the establishment.

DISPOSITION:

A final conference was held with Human Resources Manager's Norman Hill and Monica Safford at 385 Centennial Olympic Park Dr NW Atlanta, GA 30313 on January 25, 2017. WHI (b) (6), (b) (7)(C) represented Wage and Hour Division. WHI (b) (6), (b) (7)(C) discussed the findings of the investigation and changes that should be made immediately.

During the final conference, WHI (b) (6), (b) (7)(C) discussed the investigation findings per requirements set forth in Fact Sheet 73, and the violations found under 207®(1); the employer failed to provide-

- (A); a reasonable break time for an employee to express breast milk for her nursing child for 1 year after the child's birth each time such employee has need to express the milk; and
- (B); a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk.

WHI (b) (6), (b) (7)(C) also conducted a work site inspection with management to identify an appropriate space for employees should the need arise in the future for Nursing Mother to express breast milk. It was determined and management concurred that the family support office would be suitable and meets the requirements per Fact Sheet 73 and Section 207(r) of the Act.

Mr. Hill acknowledged his understanding of the regulation, and assured WHI (b) (6), (b) (7)(C) that the appropriate steps would be taken to comply in the future. Mr. Hill and Mrs. Safford stated they are currently working on a policy to address the Nursing Mothers requirements and ensure compliance throughout all of their locations.

Publications provided and discussed: HRG was provided to Mrs. Banks on December 20, 2016. Regulation Part 541, Regulation Part 516, Regulation Part 578, Fact Sheet 73, and Fact Sheet 28D were provided during the final conference.

Future correspondence should be sent to:

The Sheltering Arms, Inc.
Attn: Monica Safford (HR Generalist)
385 Centennial Olympic Park Dr NW
Atlanta, GA 30313

Recommendations:

I recommend this file be administratively closed.

Wage & Hour Investigator

Date: January 26, 2017

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1811487 Originating District: Tampa FL District Office
Local Filing Number: 2017-342-28821 Investigating District: Tampa FL District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 01/18/2017
Assignment Date: 01/23/2017

Employer Information

Trade Name: E-Telequotes Insurance
Address: 2180 American Flyer Way

Brooksville, FL 34604

Legal Name: E-Telequotes Insurance
EIN: 20-2312336
County: Hernando
NAICS Code: 561422
No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 08/01/2016 BNPI:
To: 01/25/2017 Reinvestigation: ☐
Investigation Type: (b) (7)(A) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

FMLA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FMLA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	
Total Violations Under FMLA:	1						\$0.00

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

17.5 HRs 203s1 (b) (7)(E) (b) (7)(E) terminated due to breaks as nursing mother. ER: Melinda MacConnel, legal counsel Disposition: Firm terminated EE due to excessive breaks (not used to express milk). Additional issues with EE noted by ER as reason for termination. Tour confirmed room provided not considered 'adequate space' due to chemicals in room. ER agreed to remove toxin & future compliance. ER agreed to amend FMLA policy to include covered veterans. pubs: HRG & FS 73 & 28D Rec ADM CL.

WHI Signature: _____ Date: 02/02/2017

Reviewed By: _____ Date: _____

E-Telequotes Insurance, Inc.
2180 American Flyer Way, Brooksville, FL 34604
Telephone: 727-946-5672
Local Contact: Laurel DeMattia, Director of Human Resources-Brooksville
Representative: Melinda MacConnel, Legal Counsel
Representative Contact; 727-953-9458
EIN:20-2312336
Case ID: 1811487

FLSA NARRATIVE

Please forward all future compliance to Laurel DeMattia and Melinda MacConnel at the Physical Address above.

COVERAGE:

Subject firm is a Health Insurance Sales Call Center that was incorporated in the state of Florida on 2/1/2005. The firm employs about (b) (4). The Call Center has two locations: the headquarters located at 14450 46th Street North-Suite 105, Clearwater, FL 33762 and the establishment located in Brooksville, FL. The investigation was limited to the Brooksville location which employs (b) (4) staff members.

All employees of the establishment were covered on an enterprise basis under Section 203(s) for the entire investigative period. The firm's ADV in 2016 was (b) (4); 2015 was (b) (4); and 2014 was (b) (4). Additionally, the call center staff deal with insurance partners across the country like CIGNA, Humana, United Healthcare, Anthem Blue Cross/Blue Shield, Mutual of Omaha, and Aetna. The phone sales agents sell *"insurance to customers in Florida, Georgia, Louisiana, Arizona, California, Texas, and a handful of other states."* (see Exhibits B-3, C-3, & D-4(ag).

The period of investigation is from 08/01/2016 to 01/25/2017.

Limitations: The investigation was limited to compliance with Section 207(r) Break Time for Nursing Mothers at the Brooksville Call Center.

MODO: Tampa DO is MODO. MODO contacted on 1/30/2017. (b) (7)(E) (see Exhibit D-1).

HRG: A copy of the HRG was sent electronically on 1/23/2017 when the compliance action was initiated (see Exhibit D-2).

216(b): The employer was not aware of any suits against the firm during the meeting on 1/25/2017.

EXEMPTIONS:

The investigation was limited to (b) (7)(E) about Break Time for Nursing Mothers as discussed in Section 207(r) of the Act. As no wage complaints were received, the exemptions in Section 213(a)(1) were not tested.

STATUS OF COMPLIANCE:

This investigation was initiated (b) (7)(E) (b) (6), (b) (7)(C) (b) (7)(E) was terminated due to excessive break time spent expressing. (b) (7)(E).

(b) (6), (b) (7)(C) (b) (7)(E) spent an average of 20 minutes per nursing break (with periods of at least five minutes per breast spent expressing)(see B-3). Supervisor (b) (6), (b) (7)(C) claimed (b) (6), (b) (7)(C) was noted in the break room (not the room dedicated for lactation purposes) on at least seven (7) occasions on 1/10/2017 (D-12). The dialer system records for 1/10/2017 confirmed 7 breaks of at least 20 minutes in duration and an additional 5 breaks that were between 5 and 13 minutes in duration. These reports corroborate (b) (6), (b) (7)(C) (b) (7)(E) on 1/10/2017 (b) (6), (b) (7)(C) took six breaks for nursing. However, the dialer reports also support the employer's (b) (7)(E) there were additional breaks taken that were not for expressing purposes (D-13).

(b) (6), (b) (7)(C) has asked the department to request company surveillance footage to verify where (b) (6), (b) (7)(C) was during the short breaks noted by the department. However, this request was denied as there was an **additional** break taken that was at least twenty minutes in duration and confirmed by (b) (6), (b) (7)(C) as being **for something other than expressing**. Additionally, the dialer system report confirms that the final call taken by (b) (6), (b) (7)(C) on 1/10/2017 ended at 17:36:56 (or 5:37 pm). (b) (6), (b) (7)(C) shift did not end until 6:00 pm. The firm used this failure to use (b) (6), (b) (7)(C) time productively for the firm as an additional justification for

terminating (b) (6), (b) (7)(C).

When asked why the firm terminated (b) (6), (b) (7)(C) the day after (b) (6), (b) (7)(C) met with Laurel DeMattia the human resources director without having written (b) (6), (b) (7)(C) up or hinting at termination on 1/10/2017, the firm provided the department with (b) (6), (b) (7)(C) personnel file. The firm recorded several incidents which began on (b) (6), (b) (7)(C) first day in the call center environment (1/3/2017). (b) (6), (b) (7)(C) was officially reprimanded on 1/9/17 (verbal warning 1) and again on 1/10/17 (verbal warning 2). After (b) (6), (b) (7)(C) supervisor (b) (6), (b) (7)(C) told Mrs. DeMattia that (b) (6), (b) (7)(C) had noted (b) (6), (b) (7)(C) away from (b) (6), (b) (7)(C) work station on unapproved breaks (not in the room designated for expressing), the firm pulled the dialer report and made the decision to terminate (b) (6), (b) (7)(C). The department does not recognize the termination as retaliation for break time spent for nursing by (b) (6), (b) (7)(C).

(b) (6), (b) (7)(C) Disposition: The employer was contacted upon initiation of the compliance action on 1/23/2017. (b) (6), (b) (7)(C) was contacted again on 1/30/2017 to discuss the findings.

History- The employer has no history of investigations by the department.

Section 206 - Minimum Wage- No Violations noted.

(b) (7)(E) was limited to break time for nursing mothers as allowed by Section 207(r) of the Act. (b) (6), (b) (7)(C) did not (b) (7)(E) any illegal deductions or a failure to pay for hours worked. As such, the investigation was limited to (b) (7)(E) and no minimum wage violation was noted/cited (see (b) (7)(E)).

Section 207 - Overtime- Violation noted in connection with 207(r)

The firm set up a chair in their supply room that was dedicate for use by nursing mothers. The supply room door was kept ajar to allow entry or access to the room key could be obtained through the receptionist. The room was clean, well lit, and private. However, the room was not suitable for expressing milk due to the nature of the items stored there (D-5 to D-10, B-1 & B-3).

The maintenance supply room stored Lysol, spray bottles full of window and bathroom cleaners, and stainless steel clear and polish that clearly have warning labels. The Stainless Steel cleaner warning reads "DANGER: Harmful or fatal if swallowed. EXTREMELY FLAMMABLE. May cause eye irritation

(see D-10)." The room can not be considered an adequate space for expressing milk when the items stored in the dedicated space would contaminate the milk and cause harm when ingested.

Section 211 - Records Keeping- No Violations noted.

Interviews confirmed that all hours worked were recorded and paid. Also, the firm did not require nursing mothers to clock out for time spent expressing. Rather, the time was combined with the paid breaks and unpaid lunches offered to all employees.

It should be noted that phone agents perform sales while making calls on a dialer system. The system records all time spent making calls and any waiting time spent between ending one call and initiating the next. This sophisticated report was provided to the department as evidence of excessive breaks taken by (b) (6), (b) (7)(C) (see Exhibit D-11).

Section 212 - Child Labor- No Violations noted.

A site tour and interviews confirmed that the firm did not hire minors. As such, no child labor violations were (b) (7)(E) or noted (see "B" Exhibits).

FMLA: Policy Deficiency Noted.

The firm is covered under the FMLA. The Clearwater, FL headquarters employs (b) (4) employees in addition to the (b) (4) staff members hired to work in Brooksville, FL in fall 2016. The firm provided their FMLA policy for review. The policy included NDAA changes with the exception of mentioning "covered veterans." The omission was pointed out to the firm who agreed to amend their policy to include veterans (see Exhibit D-4p).

DISPOSITION:

A copy of the HRG was sent electronically on 1/23/2017 when the compliance action was initiated. At that time a copy of the Fact Sheet 28D-FMLA notification requirements, Fact Sheet 73- Break Time for Nursing Mothers, and Fact Sheet 77a- Retaliation Prohibition were provided to the Director of Human Resources (Laurel DeMattia) and legal counsel Melinda MacConnel (see Exhibit D-2).

A meeting was held with Laurel DeMattia, HR Specialist; Melinda MacConnel, legal counsel; and John

Scott the site director on 01/26/2017 at the establishment. Coverage was discussed and confirmed at that time. Interviews and an establishment tour were performed. At that time a discussion about Section 207(r) and adequate spaces for nursing occurred. The employer stated that the room was in a newly built part of the call center, organized, clean, had an electrical plug and sink, and had a lock on the door to allow privacy for use. The employer stated that with all these factors they felt the room was an adequate space for the nursing mothers in their facility to express milk. They didn't even recognize the hazards of the cleaning supplies because they were mild room cleaners that are used every day. Laurel DeMattia and Melinda MacConnel agreed to ensure that storage space of all toxic items is sealed and/or removed from the supply room to prevent contamination of any expressed milk.

At that time the employer stated that they will comply with the Act by:

- providing an adequate, safe space for nursing;
- providing unlimited break time for employees expressing milk; and
- refraining from retaliating against employees exercising their rights, specifically break time for nursing mothers.

A final conference was held via telephone with attorney Melinda MacConnel on 2/1/2017. During the conference the violations were discussed in detail. Mrs. MacConnel agreed to fully comply in the future with all applicable provisions of the FLSA.

(b) (6), (b) (7)(C) was advised of the results of this investigation on 01/30/2017.

Recommendation: I recommend the file be closed administratively.

(b) (6), (b) (7)(C)

Investigator

2/2/2017

Publications provided and discussed: A copy of the HRG was sent electronically on 1/23/2017 when the compliance action was initiated. At that time a copy of the Fact Sheet 28D-FMLA notification requirements, Fact Sheet 73- Break Time for Nursing Mothers, and Fact Sheet 77a- Retaliation Prohibition were provided to the Director of Human Resources (Laurel DeMattia) and legal counsel Melinda MacConnel (see Exhibit D-2).

E-Telequotes Insurance Case ID: 1811487

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1812755 Originating District: Raleigh NC District Office
Local Filing Number: 2017-291-00248 Investigating District: Raleigh NC District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 01/30/2017
Assignment Date: 01/30/2017

Employer Information

Trade Name: Baxter Healthcare
Address: 65 Pitts Station rd.

Marion, NC28752

Legal Name: American Healthcare Associates
EIN: EIN Missing
County: McDowell
NAICS Code: 339113
No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 03/02/2015 BNPI:
To: 03/01/2017 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☐
Compliance Status: Not Applicable Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

FMLA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FMLA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

*7.25 HRs, (b) (7)(E) ER would not allow break time under FLSANM, (b) (7)(E) resigned, did not want remedies and would not (b) (7)(E), (b) (7)(E) has been inform, if disposition, Rec. Admin. Closing (b) (7)(E).

Pubs: NA.

WHI Signature: _____ Date: 03/22/2017

Reviewed By: _____ Date: _____

Case ER: Case ID: 1812755

**American Healthcare Associates
Dba: Baxter Healthcare**

Case ID: 1812755

**Baxter Healthcare
65 Pitts Station Road
Marion, N.C. 28752**

Federal Tax ID#:

COVERAGE

FLSANM NARRATIVE

CASE ASSIGNMENT INFORMATION: This case was initiated (b) (7)(E) (b) (6), (b) (7)(C) (b) (7)(E) the subject firm did not allow (b) (6) to express breast milk as needed under FLSANM.

The subject firm is a manufacturing plant that manufactures IV bags and medical supplies for hospitals in the U.S. There are numerous locations throughout the U.S. and the corporate office is located in Deerfield, IL. The location in Marion on Pitts Road has at least (b) (4) employees and manufactures IV bags.

(Exhibits B-1-B-1-B, C-1-C-1-B).

INDIVIDUAL COVERAGE: N.A.

SCOPE: This was a limited investigation of the subject firm's location under the Fair Labor Standards Act Nursing Mother Provision (FLSANM).

PERIOD OF INVESTIGATION: March 2, 2015-March 1, 2015

MODO: The firm has numerous locations throughout the U.S. and the Des Moines, Iowa District Office is the MODO. (b) (7)(E) (Exhibits D-0-D-0-D).

MAPPING AND FISSURING: This was not explored due to the disposition of this investigation.

Exemptions

No exemptions were deemed applicable due to the disposition of the investigation.

STATUS OF COMPLIANCE

HISTORY: There is investigative history for this location of the firm.

Case ID: 374450: POI: 02/10/1997-02/10/1998. (b) (6), (b) (7)(E) wrongful termination under FMLA. (b) (7)(E) (Exhibit D-2)

Case ID: 147788: POI 04/19/2007-04/19/2007. No information was on the case summary dump. (Exhibit D-3).

Case ID: 14735: POI 04/27/2007-04/27/2007. (b) (6), (b) (7)(E) not paid holiday pay while on FMLA. ER ATC, ATP \$230.08 in back wages. (Exhibit D-4).

(b) (6), (b) (7)(C) **Data:** (b) (6), (b) (7)(C) (b) (7)(E) the subject firm did not allow (b) (6), (b) (7)(C) to express breast milk as required under FLSANM. (b) (6), (b) (7)(C) resigned and did not want any remedies. (b) (6), (b) (7)(C) did not want this to happen to anyone else and asked WHD to investigate. (b) (6), (b) (7)(C) did not provide (b) (7)(E) and the investigation cannot proceed without (b) (7)(E). (b) (6), (b) (7)(E) has been informed of the disposition of this case. (Exhibits B-1-B-1-B).

Nursing Mothers: Since the investigation could not proceed, no findings were determined.

DISPOSITION

(b) (6), (b) (7)(C) was on Personal Time Off when (b) (6), (b) (7)(E) contacted WHD and (b) (6), (b) (7)(E) this was due to (b) (6), (b) (7)(C) treatment by the subject firm as a nursing mother. The WHI interviewed (b) (6), (b) (7)(C) prior to contacting the subject firm to schedule the initial conference. (Exhibits B-1-B-1-B).

(b) (6), (b) (7)(C) indicated to the WHI that (b) (6), (b) (7)(C) had resigned due to (b) (6), (b) (7)(C) treatment as a nursing mother because (b) (6), (b) (7)(C) could not feed (b) (6), (b) (7)(C) child. The WHI asked what remedies (b) (6), (b) (7)(C) may be looking for and also indicated that (b) (6), (b) (7)(C) would need to research what if any WHD may be able to obtain since (b) (6), (b) (7)(C) resigned (b) (6), (b) (7)(C) position. (b) (6), (b) (7)(C) indicated that (b) (6), (b) (7)(C) did not want reinstatement or back pay but did not want the subject firm to treat anyone else the way (b) (6), (b) (7)(C) was treated which is why (b) (6), (b) (7)(E) (Exhibits B-1-B-1-B).

The ADD instructed the WHI to obtain (b) (7)(E) from (b) (6), (b) (7)(C) and proceed with the

investigation with the goal of obtaining future compliance if violations were found. The WHI attempted to obtain (b) (7)(E) and while (b) (6), (b) (7)(C) indicated that (b) (6), (b) (7)(C) would email this to the WHI on March 17, 2017 and March 20, 2017 it was never received. The WHI contacted (b) (6), (b) (7)(C) again on March 20, 2017 and indicated that if (b) (7)(E) was not received on by 12:00 p.m. on March 21, 2017 WHD would not proceed with the case.

The WHI informed the ADD about this situation on March 21, 2017 (b) (7)(E)

[REDACTED]

CIVIL MONEY PENALTIES (CMP's) –N.A.

RECOMMENDATION: This case can be administratively closed (b) (7)(E)

PUBLICATIONS: N.A.

Correspondence sent to: N.A.

Respectfully Submitted,

(b) (6), (b) (7)(C), Wage Hour Investigator March 22, 2017

WHISARD Compliance Action Report

U.S. Department of Labor Wage and Hour Division

Case ID: 1814608 Originating District: Hartford CT District Office
Local Filing Number: 2017-197-00168 Investigating District: Hartford CT District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 02/17/2017
Assignment Date: 02/17/2017

Employer Information

Trade Name: East Windsor Public Schools Legal Name: East Windsor Public Schools
Address: 70 Main Street EIN: (b) (7)(E)
County: Hartford
NAICS Code: 0971
East Windsor, CT06088 No. Of Employees: 0

Investigation Information

Period Investigated From: 01/01/2017 BNPI:
To: 02/24/2017 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: (b) (7)(E) Future Compliance Agreed: ☐
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

WHISARD Compliance Action Report

Conclusions & Recommendations:

2 hrs. 3s1c cov; (b) (7)(E) non-exempt EE. (b) (7)(E) ER refused to allow (b) (6), (b) (7)(E) to express milk one additional half-hour per shift. (b) (7)(E) ER claims there wasn't enough coverage to relieve (b) (6), (b) (7)(E) of (b) (6), (b) (7)(E) paraprofessional duties. (b) (7)(E) claimed otherwise. Inv. explained law & ER ATC. C notified.

WHI Signature: _____ Date: 02/24/2017

Reviewed By: _____ Date: _____

WHISARD Compliance Action Report

U.S. Department of Labor Wage and Hour Division

Case ID: 1822957 Originating District: Miami FL District Office
Local Filing Number: 2017-249-00070 Investigating District: Miami FL District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 05/19/2017
Assignment Date: 05/19/2017

Employer Information

Trade Name: Lilly Pulitzer Store Legal Name: Lilly Pulitzer Store
Address: 3101 PGA Blvd EIN:
F111 County: Palm Beach
Palm Beach Gardens, FL 33410 NAICS Code: 448140
No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 08/15/2016 BNPI:
To: 05/19/2017 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: (b) (7)(E) Future Compliance Agreed: ☐
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: 05/24/2017
Submit For Opinion: ☐ Trailer forms attached: ☐

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

WHISARD Compliance Action Report

Conclusions & Recommendations:

Enterprise Coverage: Firm exceeds ADV \$500,000.00 / (b) (4) employees.

(b) (6), (b) (7)(C), (b) (7)(E) (b) (6), (b) (7)(C) employer failed to provide (b) (6), (b) (7)(C) with proper accommodations to express milk on 8/15/2016 in violation under FLSNM. (b) (6), (b) (7)(C) was informed that ER was going to be advised about accommodations for future reference.

(b) (7)(E) concluded. Recommend adm closure. (b) (6), (b) (7)(C) - notified of results. Copy of Fact Sheet # 73 and HRG were mailed to ER and (b) (6), (b) (7)(C)

WHI Signature: _____ Date: 05/24/2017

Reviewed By: _____ Date: _____

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1825677 Originating District: Raleigh NC District Office
Local Filing Number: 2017-291-00624 Investigating District: Raleigh NC District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 06/21/2017
Assignment Date: 06/22/2017

Employer Information

Trade Name: A Wireless Legal Name: ABC Phone of North Carolina, Inc.
Address: 6400 Weddington-Monroe Rd. EIN: 56-2151684
County: Union
NAICS Code: 4431
Matthews, NC28104 No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 06/28/2015 BNPI:
To: 06/27/2017 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FMLA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FMLA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

20hrs, Cov 203s1A; (b) (6), (b) (7)(C) (b) (7)(E) (b) (6), (b) (7)(C) did not provide adequate space for Nursing mom. (b) (7)(E) 207r. Vio found. No Backwages are due. No other violations were found. No MW, OT, RK or CL. Employer agreed to complaine by altering breakroom space for privacy without intrusion to NM. ER has over 1100 location and agreed to complaine for all locations. (b) (7)(E) was notified of results. pub given HRG, FS #44, 73, 22, 23, 77. Rec cl.

WHI Signature: _____ Date: 08/23/2017

Reviewed By: _____ Date: _____

ABC Phones of North Carolina Incorporate
Dba/ A Wireless (authorized Verizon dealer)
6400 Weddington-Monroe Road
Matthews, NC 28104

Case ID: 1825677
Case File# 2017-291-00624

Corporate Office:
Mr. John Crolle
Secretary/General Counsel
A Wireless
1290-B East Arlington Blvd.
Greenville, NC 27858

EIN: 56-2151684

Employer Representative:
Ms. Kerry A. Shad
Attorney at Law
Wells Fargo Capitol Center
150 Fayetteville Street
Suite 2300
Raleigh, North Carolina 27601
Tel: 919-821-6672 Fax: 704-821-6800

FLSA Narrative

Coverage

Enterprise Coverage: 203(s)(1)(A) is applicable: Employer has 2 or more employees regularly handle goods, cellular phone and accessories, which have moved in commerce, manufactured in and shipped from other states by Verizon phone products. Employees at subject establishment regularly process payments through credit card transactions and initiate procedures which establish the connection of customer's cellular phone to the cellular transmission traveling via interstate commerce. (See Exhibit c-1, C-7)

Annual Dollar Volume of Sales:

The employer representative stated that the employer's annual dollar sales well exceeded \$500,000.00. Previous investigation shows the employer made well over (b) (4) for each year. (See Exhibit C-1, C-8, case ID #1555819)

203(d) Employer: Lone Star Equity Group, Dallas Texas. Is a private equity firm consisting of several members that share ownership of the business. (b) (6), (b) (7)(C) is the District Manager for the subject location, meets the definition of an employer under Section 203(d). (b) (6) is involved in the daily

operations of the business. (b) (6) has hired and fired employees, directed their work and otherwise acted in the direct interest of the corporate entity in relation to the employees. (See Exhibit C-1)

Employment Relationship: During this investigative period the employer did not claim any of its workers as independent contractors. (See Exhibit B-1 – B-4)

Nature of Business: Lone Star is a global private equity firm that have current ownership of ABC Phones of NC. The company has organized seventeen private equity funds with aggregate capital commitments totaling over \$70 billion.

ABC Phones of North Carolina, Inc., doing business as A Wireless, Inc., operates as a retailer of Verizon Wireless products and services. The company offers smartphones and cellphones, audio products, batteries, Bluetooth, cases, chargers, holders, kits, memory products, screen protectors, and others. This establishment was founded in 1996 and based in Greenville, NC, with over 1100 stores throughout the United States and 23 stores are located in the state of North Carolina. The firm was incorporated in North Carolina in 1996. They employ over (b) (4) employees in 45 states across the US. (See Exhibit C-1, C-7, C-8)

MODO: (b) (7)(E)

Scope of Investigation: This Investigation is limited to the subject firm located at 6400 Weddington-Monroe Road, Wesley Chapel, NC.

Period of Investigation: June 28, 2015 to June 27, 2017.

Mapping: This establishment is affiliated with Verizon Wireless. Verizon Wireless is an American telecommunications company, a wholly owned subsidiary of Verizon Communications, which offers wireless products and services. With 146 million subscribers as of April 2017, Verizon Wireless is the largest wireless telecommunications provider in the United States. Verizon Wireless sells brands such as, Apple, Samsung, Fitbit, Otterbox, Motorola, Jabra and HTC products. (See Exhibit C-1)

Other Laws:

FMLA: The employer is a covered employer. Throughout the enterprise they have employed at least 50 employees, that have worked in a 20 work week period for the current or previous calendar year. (See Exhibit C-1)

Exemptions

No exemptions claimed and/or reviewed.

Status of Compliance

Prior History: WHISARD does show history for this enterprise, case # 1555819, (b) (7)(E) of minimum wage violation; (b) (7)(E)

(b) (6), (b) (7)(C)

(b) (7)(E) failure to provide reasonable break time and adequate space for FLSNM.

(b) (7)(E), WHI tour the establishment and found that there was no adequate space for a nursing mom to express milk IAW FLSA 207(r).

No back wages due: (b) (6), (b) (7)(C)

Notification: (b) (6), (b) (7)(C) was notified of the results on August 23, 2017. (See Case Diary)

(b) (6), (b) (7)(C) was informed of 16B rights upon initial contact from assigned WHI and throughout the investigative process.

Pay practice: The employer recently switch from semimonthly to bi-weekly pay. The workweek ends on a Tuesday. Employees record hours via time clock punch. Employees receive a meal break of 30 or more minutes and clock out for those breaks.

Store Managers perform any necessary edits to time cards.

The employer has a policy for Lactation breaks (See Exhibit C-4)

This WHI reviewed the profile pay period, conducted a sampling of the records and employee interviews. (See Exhibit A-0, B-1 – B-4)

Section 206: There are no minimum wage violations found. Interview statements and a review of the records, show that all employees receive at least federal minimum wage. (See Exhibit A-0 and B-1- B-4)

Section 207: There are no overtime violations found. Through Interview statements and a review of the records, show that all employees are paid at time and one/half for hours over 40 in the workweek. (See Exhibit A-0 and B-1 – B-4).

Section 207(r) Break Time for Nursing Mothers Provision. There is a violation found. WHI conducted a tour of the establishment and through Interview statements show that there is no adequate space for a nursing mother to express milk. The space provided by the employer was a common break

room, no locking mechanism on the door. The company safe is located in the same room and when items are sold other employees have to come back to the safe to retrieve the item. (See Exhibit B1- B-4)

Section 211: There is no Record Keeping violation found. Time and Pay records are being maintained in accordance with the FLSA.

Section 212: There are no violations found. The employer stated she does not hire under the age of 18 and Interview statements support the statement. (See Exhibit B-1 – B-4 and C-1)

Other Laws:

FMLA: The employer is a covered employer. Throughout the enterprise they have employed at least 50 employees that have worked in a 20 work week period for the current or previous calendar year. The employer employs approximately (b) (4) employees' enterprise wide and approximately (b) (4) at the subject location. (See Exhibit C-1)

Disposition

Initial Conference: On July 11, 2017, initial conference was held via telephone with employer's representative, Attorney Kerry Shad and this WHI. Ms. Shad disclosed that her client ABC Phones of NC annual dollar well exceeded 500k annually. This WHI discussed the provisions of the Fair Labor Standard Act, Family Medical Leave, Liquidating Damages and Civil Money Penalties. Ms. Shad stated she and the employer were well aware of the FLSA. WHI went to the establishment at a later date and conducted interview of employees and tour the establishment. This WHI explained that the employer appeared to be a covered employer for the Family Medical Leave Act. Ms. Shad provided a Family Medical Leave policy for review.

Final Conference: On August 23, 2017, this WHI conducted a final conference Via Telephone with Employer Representative, Attorney Kerry Shad and WHI (b) (6), (b) (7)(C) represented the Wage Hour USDOL office.

This WHI discussed coverage, perimeter of the Fair Labor Standards Act, explained that this was a limited Investigation, limited to the subject firm floor sales consultants.

This WHI discussed the violations as stated;

Section 206 Minimum wage- No violations found.

Section 207 Overtime- No Violations found.

Section 207 (r) Break times for Nursing Mothers Provision- Violations was found. No adequate space was provided for a nursing mom.

Section 212 Child Labor- No Violations found.

Section 211 Record keeping- No violation was found. Employees time and pay records are in compliance with the FLSA.

This WHI, once again discussed liquidating damages and civil money penalties.

The WHI also discuss that factors of nursing mother provision, employees are not be retaliated and or harassed for exercising their right to nurse.

If the break is within the normal break perimeter then no deductions should occurred but if the break is outside the normal breaks and exceed 20 minutes or more then the employee may clock out for that time. WHI referred to the company policy for lactation breaks to recommend that it reinforce discrimination and retaliation against nursing mother employees.

Going forward Ms. Kerry Shad, the Employer's Representative stated that his client, ABC Phones of North Carolina Inc., would agree to compliance of the FLSA and the nursing mothers provisions across all stores within the enterprise:

- Agreed that not all stores were set up the same but would place partitions/panels tall and/or wide enough to seclude the nursing mother from site of others within the back area provided as a break area and not inside a bathroom at the subject firm when necessary.
- Agreed to make the necessary changes to accommodate nursing mothers in all locations and to look in advance to have a plan for future nursing mothers.
- Agreed to discuss retaliation with the store managers so that no nursing mother is retaliated and or discriminated against for exercising the right to nurse.
- Agreed to continue to pay at least minimum wage.
- Agreed to continue to pay time and one/half for hours exceeding 40 in the work week to nonexempt employees.
- Agreed to keep accurate records in compliance with the FLSA
- Understood the Child Labor provision as it may apply to the nature of the business.

Other Laws: Family Medical Leave Act: The employer has a written FMLA policy and it is written in compliance with the act. (See Exhibit D-1)

The employer is a covered employer; they employ approximately (b) (4) employees. The employer is aware that not all employees will be eligible for FMLA.

Recommendation: It is recommended that this case be administratively closed.

Publications: HRG, Fact Sheet 73, 21, 22, 23, 28D, 44 and 77A was provided.

CMP data: The employer was advised that there are provisions for the assessment of fines against employers who have been found to willfully and/or repeated violate the Act which include minimum wage, overtime, record keeping and child labor.

All correspondence should be sent to:

Corporate Office:

Mr. John Crolle
Secretary/General Counsel
A Wireless
1290-B East Arlington Blvd.
Greenville, NC 27858

Employer Representative:

Ms. Kerry A. Shad
Attorney at Law
Wells Fargo Capitol Center
150 Fayetteville Street
Suite 2300
Raleigh, North Carolina 27601
Tel: 919-821-6672 Fax: 704-821-6800

(b) (6), (b) (7)(C)

Wage Hour Investigator
8/23/2017

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1834648 Originating District: Baltimore MD District Office
Local Filing Number: 2018-118-11023 Investigating District: Baltimore MD District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 10/05/2017
Assignment Date: 10/05/2017

Employer Information

Trade Name: G4S Security Solutions
Address: 2800 Crystal City Drive
Suite 210
Arlington, VA22202

Legal Name: G4S Secure Solutions (USA), Inc.
EIN: 59-0857245
County: Arlington
NAICS Code: 561612
No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 08/01/2017 BNPI:
To: 10/17/2017 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Full Investigation Future Compliance Agreed: ☐
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

FLSNM, case arose from (b) (7)(E) not provided with a proper place to express milk. A full inv was conducted and case was found to be (b) (7)(E). A FC was held via phone on 10/23/17 w/Kara Nickholds, Equality Programs and Compliance Manager. Ms. Nickholds agreed to comply. Ms. Nickholds was made aware by this Inv, CMPs will be assessed if another (b) (7)(E), also that (b) (7)(E) shouldn't be (b) (7)(E). I rec this case be admin closed (b) (7)(E).

WHI Signature: _____ Date: 10/23/2017

Reviewed By: _____ Date: _____

G4S Secure Solutions (USA), Inc.
Dba G4S Secure Solutions
2800 Crystal Drive
Suite 210
Arlington, VA 22202
Phone: 703-518-8860
Case ID: 1833729
EIN#: 59-0857245

FLSNM NARRATIVE REPORT

OVERVIEW

This case was assigned (b) (7)(E) (b) (6), (b) (7)(C) (b) (7)(E) supervisor failed to provide (b) (6), (b) (7)(C) with reasonable break time to express (b) (6), (b) (7)(C) milk. (b) (6), (b) (7)(C) also (b) (7)(E) (b) (6), (b) (7)(C) is expressing milk in a public bathroom. Thus, violating the Patient Protection and Affordable Care Act signed into law by the President on March 23, 2010. Whereby, it states that a nursing mother must have private accommodations to express milk for up to 1 year of newborn birth. A full investigation was conducted by this Investigator to determine compliance. (b) (7)(E)

COVERAGE

Employee

(b) (6), (b) (7)(C) is non-exempt from FLSA Section 7(a) hourly paid employee. Additionally, the period of time for employees that need to express milk for their nursing children is within one year after the children's birth. Written (b) (7)(E) was given from (b) (6), (b) (7)(C).

Employer

The firm is a Sec. 3(s)(1) enterprise and all employees are covered on an enterprise basis for the entire period of the investigation. The firm's ADV per Ms. Kara Nickholds, Equality Programs and Compliance Manager, is the following:

2014 - (b) (4)
2015 - (b) (4)
2016 - (b) (4)

(See Exhibit C-1)

Subject firm employs two or more employees who handle, sell, or otherwise work on goods or materials that have been moved in or produced for commerce by any person.

Period of Investigation:

The period of investigation for the above firm commenced on August 1, 2017 and concluded on October 17, 2017.

The primary contact person throughout the course of the investigation was William Swafford, Operations Manager. Mr. Swafford can be contacted at (703) 733-6148. This Investigator was then notified new contact person would be Kara Nickholds, Equality Programs and Compliance Manager. She can be contacted at (561) 691-6593. Ms. Nickholds office is located at subject firm's headquarters. That address is 1395 Jupiter Boulevard, Jupiter, FL 33458.

HISTORY

Whisard showed no history for subject firm.

MOD0

A MODO search revealed Miami, Florida DO as the MODO. Subject firm's headquarter is located at 1395 Jupiter Boulevard, Jupiter, FL 33458.

(b) (7)(E)

EXEMPTIONS

No exemptions were claimed. None of the employees covered in this investigation have a status of salaried exempt.

COMMUNICATION LOG

10/10/17 – Held IC with (b) (6), (b) (7)(C), HR Manager

10/11/17 – Spoke to (b) (6), (b) (7)(C), Operations Manager via phone. (b) (6), (b) (7)(C) indicated reached out to the Trump Hotel yesterday (10/10/17) and had not heard back with regard to accommodating (b) (6), (b) (7)(C) refused to provide contact information for the hotel and requested something in writing for information and documents requested during IC.

10/12/17 – This Inv emailed (b) (6), (b) (7)(C) inquiring about any changes at work. (b) (6), (b) (7)(C) indicated ER had sent (b) (6), (b) (7)(C) to Baltimore for a job interview to work at a different site. (b) (6), (b) (7)(C) indicated job location would be far from home and would cause a hardship. (b) (6), (b) (7)(C) also indicated, was still expressing milk at the public bathroom.

10/12/17 – This Inv called Trump Hotel, lvm for HR Coordinator (b) (6), (b) (7)(C)

10/13/17 - This Inv called Trump Hotel, lvm for HR Coordinator (b) (6), (b) (7)(C)

10/16/17 - This Inv called Trump Hotel three times, lvm for HR Coordinator (b) (6), (b) (7)(C)

10/17/17 - This Inv called Trump Hotel, lvm for HR Coordinator (b) (6), (b) (7)(C)

10/17/17 - This Inv called Trump Hotel, front desk person provided this Inv with (b) (6), (b) (7)(C)

direct # and email address. This Inv called (b) (6), (b) (7)(C) direct # and (b) (6), (b) (7)(C) answered. (b) (6), (b) (7)(C) indicated would pass the information to (b) (6), (b) (7)(C) leaders since (b) (6), (b) (7)(C) couldn't provide this Inv with any information.

10/17/17 – Spoke to Kara Nickholds from G4S headquarters. She provided info/docs requested during IC.

10/17/17 – This Inv spoke to (b) (6), (b) (7)(C), Senior VP Human Resources for The Trump Organization. (b) (6), (b) (7)(C) indicated that on 10/12/17 G4S was notified there was a space available for (b) (6), (b) (7)(C) to express milk at the hotel. (b) (6), (b) (7)(C) also indicated they have an event room called Madison, where (b) (6), (b) (7)(C) can go and privately express milk.

10/19/17 – This Inv emailed (b) (6), (b) (7)(C) to inquire about (b) (6), (b) (7)(C) status, (b) (6), (b) (7)(C) indicated is still working for ER and is still expressing milk in a public bathroom.

10/19/17 – This Inv emailed (b) (6), (b) (7)(C) inquiring for the name of the person from G4S who (b) (6), (b) (7)(C) spoke to regarding a proper place in the hotel to express milk.

STATUS OF COMPLIANCE

This case was assigned (b) (7)(E) (b) (6), (b) (7)(C) (b) (7)(E) supervisor allowed (b) (6), (b) (7)(C) to express (b) (6), (b) (7)(C) milk with restrictions. This Investigator found this case to be (b) (7)(E)

During the initial conference, when speaking to (b) (6), (b) (7)(C), this Investigator explained to (b) (6), (b) (7)(C) in detail the law regarding FLSNM and how they were violating the law. This Investigator provided (b) (6), (b) (7)(C) with Fact Sheet #73, titled Break Time for Nursing Mothers under the FLSA. This Investigator also communicated to (b) (6), (b) (7)(C) that all Managers/Supervisors within the company, needed to be trained on this law and that (b) (6), (b) (7)(C) supervisor, Maj. (b) (6), (b) (7)(C) needed to be aware immediately about the law.

After the initial conference, ER was still in violation for still not providing a proper place for (b) (6), (b) (7)(C) to express milk.

On October 19, 2017, (b) (6), (b) (7)(C) emailed this Investigator and informed that on October 16, 2017, (b) (6), (b) (7)(C) was confirmed that a space to pump milk would be available for (b) (6), (b) (7)(C).

Sec. 6:

Violations were not (b) (7)(E) nor found while conducting employee interview and record check.

Sec. 7:

Violations were not (b) (7)(E) nor found while conducting record check. Employees at the location where (b) (6), (b) (7)(C) was assigned to work, did not work more than 40 hours in a work week. **(See Exhibit A)**

Section 11:

Violations were not (b) (7)(E) nor found while conducting record check.

Section 12:

Violations were not (b) (7)(E) nor found.

DISPOSITION

A final conference was held on October 23, 2017 via phone with Kara Nickholds, Equality Programs and Compliance Manager. This Investigator advised her of the basic minimum wage, overtime, record keeping, child labor, coverage and exemptions as it pertained to the firm. This Investigator also, advised her of the Patient Protection and Affordable Care Act signed into law by the President on March 23, 2010.

Ms. Nickholds was advised that pursuant to subject investigation, the firm was found to be in violation. This Investigator explained the frequency of breaks needed to express milk as well

as the duration of each break will likely vary. This Investigator also advised Ms. Nickholds that if they offer compensable breaks to their employees, (b) (6), (b) (7)(C) may choose to use such compensated breaks for purposes of expressing milk. Furthermore, this Investigator advised Ms. Nickholds that a bathroom is not a proper place to express milk and that all Supervisors and Managers should be trained on this law.

Ms. Nickholds was asked why they were in violation of the law and how they are going to come into compliance. These are the answers:

Why in violation - (b) (6), (b) (7)(C), Human Resources Manager, was not aware (b) (6), (b) (7)(C) was pumping in a public bathroom.

How going to come into compliance – Ms. Nickholds indicated she made contact with their client, (Trump Hotel) and an accommodation was provided to (b) (6), (b) (7)(C).

Ms. Nickholds was explained (b) (7)(E), they will be assessed Civil Money Penalties. Ms. Nickholds was also advised that under no circumstances, subject firm will retaliate against (b) (6), (b) (7)(C) (b) (7)(E)

Publications Provided

The following publications were provided to employer at the initial conference:

- Fact Sheet #73

(b) (6), (b) (7)(C) Notification

(b) (6), (b) (7)(C) was notified via email.

Recommendation

I recommend case be administratively closed (b) (7)(E)

(b) (6), (b) (7)(C)

WHI

WHISARD Compliance Action Report

U.S. Department of Labor Wage and Hour Division

Case ID: 1842178 Originating District: Atlanta GA District Office
Local Filing Number: 2018-111-31849 Investigating District: Atlanta GA District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 12/28/2017
Assignment Date: 01/02/2018

Employer Information

Trade Name: Lake Foods Legal Name: Lake Foods, LLC
Address: 355 Industrial pkwy EIN: 47-1275129
County: Hart
NAICS Code: 311991
Hartwell, GA30643 No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 12/07/2015 BNPI: 0
To: 12/06/2017 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☐
Compliance Status: Compliance (no violations found) Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FMLA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FMLA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

20.5h. FLSN investigation: (b) (6), (b) (7)(C) (b) (7)(E) (b) (6), (b) (7)(E) was required to use the restroom to express breast milk. (b) (6), (b) (7)(E) left after working 2 days (b) (7)(E) ER, Jennifer Fleming, HR Director stated ees are to use an empty office that has no windows and the door locks for this purpose. No other ees needed the office in the last two years. No BW, ee found other work immediately.

WHI Signature: _____ Date: 03/19/2018

Reviewed By: _____ Date: _____

Lake Foods, LLC
355 Industrial Park Rd
Hartwell, Ga 30643
Jennifer Fleming
706-371-8003 Ext 222

Case ID: 1842178
Local Filing ID: 2018-111-31849
FEIN: 47-1275129

FLSNM Narrative

Coverage

The enterprise has more than 50 employees and is therefore subject to PPACA, Patient Protection and Affordable Care Act which took effect on March 23, 2010. (P.L.111-148).

The Law amended Section 7 of the FLSA. Section 4207: Reasonable break time for Nursing Mothers.

The employer declined to produce documents showing the annual dollar volume but did provide a memo stipulating coverage. (See exhibit C-4) No one under 18 works at the plant. (See exhibit C-1b)

Period of investigation: 12/7/2015 to 12/6/2017

MODO: No MODO contact was required as the company only has one location in Georgia. (See exhibit C-1)

Nature of the Business: The subject firm where the employee worked is engaged is in the business of processing chicken for retail sale in and out of the State of Georgia. (See exhibit C-1)

Business Structure: The enterprise is owned by Dave Strawn and Stan Hayman each owning (b) (4) percent of the enterprise. (See exhibit C-4)

Branch Establishments: The Company has no other branches in the State of Georgia.

Current Workforce: (b) (4) employees at the establishment.

History There is no prior history in Whisard.

Exemptions: As this was not a case of unpaid wages so no exemptions were explored.

Status of Compliance

Reason for Investigation

This limited investigation was initiated (b) (7)(E) (b) (6), (b) (7)(C) (b) (6), (b) (7)(C). The (b) (6), (b) (7)(C) (b) (7)(C) was not provided sufficient space with sufficient privacy to express breast milk. Upon investigation (b) (6), (b) (7)(C) was provided a location that would have been sufficient. (b) (6), (b) (7)(C) claimed that (b) (6), (b) (7)(C) manager required (b) (6), (b) (7)(C) to use the restroom and did not offer the designated space. (b) (7)(E) as (b) (6), (b) (7)(C) only worked at the establishment for two days. (See exhibit B-1)

Investigation results of (b) (6), (b) (7)(C) (b) (7)(E)

PPCAC: No violation was found as the employer offered (b) (6), (b) (7)(C) a sufficient location to express (b) (6), (b) (7)(C) breast milk privately. Upon inspection one location was suitable, it is an empty office only used periodically and would be vacated any time it was needed by an employee to express breast milk. (See exhibit D-1)

Back Wages: No back wages were computed because, even though inconvenienced, (b) (6), (b) (7)(C) acquired another job almost immediately. (See exhibit B-1)

FMLA: The Company's FMLA policy is complete and contains all the current updates pertaining to the Military Care Giver leave. The company started business in September of 2014 and that is when the handbook was created and it was updated in November 2015. A copy of the employee handbook containing the policy is in the file. (See exhibit D-3l to D-3n)

DISPOSITION

The initial and final conference was held on the same day by phone with WHI (b) (6), (b) (7)(C) and Jennifer Fleming, HR Director in attendance. (b) (7)(E) were discussed; the location offered to the employee

was discussed and deemed adequate for the purpose of the Act.

The employer was advised to make sure the area that was deemed suitable is made available to any nursing mother in the future and Ms. Fleming agreed to comply.

Ms. Fleming stated that she would inform all managers that the office space is available to any nursing mother who needed it. She also stated that there were no other nursing mothers working there in the last two years. Ms. Fleming went on to say that (b) (6), (b) (7)(C) never came in to use the restroom to express breast milk and if she had, Ms. Fleming would not have allowed it. She would have directed (b) (6), (b) (7)(C) to the empty office.

I advised (b) (6), (b) (7)(C) of the results of the investigation by phone on March 16, 2018. (b) (6), (b) (7)(C) was advised that the employer has an adequate facility for nursing mothers so the investigation would be closed. (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) understood.

Publications Provided: The following publications were provided to the employer by email: Fact sheet #73 and Section 7(r) of the FLSA-Break Time for Nursing Mothers Provision fact sheet.

(b) (7)(E)

Correspondence should be mailed to:

Lake Foods, LLC
355 Industrial Park Rd
Hartwell, Ga 30643
ATTN: Jennifer Fleming
706-371-8003 Ext 222

Recommendation(s):

I recommend this file be administratively closed.

Lake Foods Case ID: 1842178

(b) (6), (b) (7)(C), WHI

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1843074 Originating District: Atlanta GA District Office
Local Filing Number: 2018-111-31875 Investigating District: Atlanta GA District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 01/09/2018
Assignment Date: 01/09/2018

Employer Information

Trade Name: Lowe's #1016 Legal Name: Lowe's Home Centers, LLC.
Address: 6011 Zebulon Road EIN: 56-0748358
County: Bibb
NAICS Code: 444110
Macon, GA31210 No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 01/01/2017 BNPI:
To: 09/30/2017 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

34.50hrs. Enterprise Cov. FLSNM limited investigation. (b) (7)(E) case file. (b) (7)(E) (b) (7)(E) ER failed to provide adequate space to express milk, space was not secure from interruption. Office space was interrupted by Mgrs. No viols for section 6, 11, and 12. FC held w/Atty and WHD on 3/22/18. Case resolved with agreement by ER to accommodate according to the req. of Break Time for Nursing Mother's. Pubs: HRG, Fact Sheet 44, 73. Recommend case to be administratively closed.

WHI Signature: _____ Date: 03/27/2018

Reviewed By: _____ Date: _____

Lowe's Home Centers, LLC.

Db a Lowe's #1016

6011 Zebulon Road

Macon, GA 31210

EIN: 56-0748358

Case ID: 1843074

Case File Number: 2018-111-31875

Fair Labor Standard Act (FLSA) NURSING MOTHER REPORT

COVERAGE

The subject firm is a chain of retail home improvement and home appliances store. The establishment has approximately (b) (4) employees but the firm has over (b) (4) employees nationwide. The firm has approximately 2,370 locations nationwide. The subject firm was incorporated in the state of North Carolina in 1946 and headquarter located at 1000 Lowes Blvd, Mooresville, NC 28117. Robert A. Niblock is the President of Lowe's Companies, Inc. Lowe's Home Centers, LLC is a subsidiary of Lowe's Companies, Inc. The firm and its employees are covered on an enterprise basis under Section 203 (s)(1)(A)(i)(ii) of the Fair Labor Standards Act during the investigative period. The firm has at least 2 full time employees handling good such as appliances that were produced for commerce and has an annual volume of business done in excess of \$500,000 per year (see exh. C-1a1-1a2). Annual dollar volume:

2016: (b) (4) 2015: (b) (4) 2014: (b) (4)

The investigative period run from 01/01/2017 to 09/30/2017. This is a limited FLSNM investigation. (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) manage the daily operations of the enterprise. Specifically, they handle the operation of the company. They deal with either payroll, employee benefits, setting pay rates, hiring and terminations of workers. They act directly in the interest of the employer in relation to an employee. Therefore, they would meet the definition of an employer under section 3(d) of the FLSA (see exh. B-1-3). The employer workweek is Saturday to Friday. The employees are paid bi-weekly basis through direct deposit. The employer has about (b) (4) employees for this location and (b) (4) employees for the entire enterprise. During this investigation, it appears that the subject firm does not have any issues relating to the employer-employee relationship under the FLSA (see exh. C-1a1-C1a2).

MODO: The North Carolina District Office is the MODO. (b) (7)(E)

(b) (7)(E)

(see exh. D-0).

EXEMPTIONS

WHI did not explore exemptions at this location due to the limitation of the investigation. It appears that the Store Managers and Assistant Managers are exempt under section 13(a)(1) under 541.100 because their primary duty is of management which includes recommendation of hiring, firing, directing, and training of at least 2 full time employees and received at least \$455 per week (see exh. A-o-1a1 and B-1-3).

STATUS OF COMPLIANCE

History: The employer does intensive history with WHD (see *Whisard ER History*). WHI placed a copy of the subject firm's history with WHD in the case file (see exh. D-2b1).

Reason for Investigation: This investigation was originally (b) (7)(E) (b) (6), (b) (7)(C) employer violated break time for Nursing Mother's. The employer provided an office to express milk but not free from intrusion by coworkers. (b) (7)(E) was interrupted a couple times during the breaks (b) (6), (b) (7)(C) was allowed. (b) (6), (b) (7)(C) (b) (7)(E) no monetary violation.

(b) (7)(E)

Section 206 - Minimum Wage: No apparent violations found. Limited investigation. A review of the firm's records and statements received from the workers determined employees were paid in excess the minimum wage for all hours worked (see exhibits A-0-1).

Section 207 –Overtime/Nursing Mothers: Violations found. (b) (6), (b) (7)(C) is an hourly

employee making (b) (6), (b) (7)(C) per hour and worked an average of 30-32 hours per week. (b) (6), (b) (7)(C) worked as a Customer Service at the Paint Department for Lowe's. A tour of the private space used by the nursing mother(s) was checked to ensure it allowed sufficient room for the nursing mother and that it was shielded from view of all co-workers. The area was also checked to ensure that there would be privacy from intrusion. The space was found to be adequate, however, not free from intrusion by coworkers (see B-2 and B-3). There are two offices that are connected together and share a door in between them. (b) (6), (b) (7)(C) was being interrupted because someone failed to lock/secure the door (whether it was the complainant or the manager of the office). The HR Manager came into the office by inserting (b) (6), (b) (7)(C) office keys in the door and attempted to open it but realized that (b) (6), (b) (7)(C) was nursing. (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) completely did not see the sign "do not disturb" on the door because (b) (6), (b) (7)(C) did not think (b) (6), (b) (7)(C) was in (b) (6), (b) (7)(C) office nursing at that time (see exh. B-2). (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) felt harassed and bullied by HR Manager (b) (6), (b) (7)(C). Due to (b) (6), (b) (7)(C) behavior pattern, (b) (6), (b) (7)(C) took a week time off and secured another job at a restaurant. (b) (6), (b) (7)(C) is making (b) (6), (b) (7)(C) per hour plus tips between (b) (6), (b) (7)(C) per week (see exh. B-2).

Section 11- Record Keeping (RK): No violations found. Based upon payroll and timesheet sample review, the employer appears to have maintained accurate records of hours during the investigative period (see exh. A-0-1a1).

Section 12- Child Labor (CL): No violations found. Information received through observations, employee statements and the firm's records revealed that the firm did not employ workers under the age of 18 (see Attorney's response C-2a1).

Section 16(b): Based on information provided, this employer is not the subject of any lawsuits involving the FLSA.

DISPOSITION

A telephone final conference was held on 03/22/2018, with Counselor Joe Hugg and WHI represented DOL. WHI discussed general information on FLSA coverage and the break time requirement for nursing mothers in the Patient Protection and Affordable Care Act (PPACA) with the Attorney. Furthermore, WHI explained that (b) (6), (b) (7)(C) was covered under the PPACA since (b) (6), (b) (7)(C) was not an exempt employee under Section 7 of the FLSA.

Regarding section 7/nursing mother violation: WHI informed Attorney Hugg that was no monetary violations found as a result of this investigation. However, Mr. Hugg was advised that the firm was required to provide a space that is free from intrusion of coworkers or the public. He was advised that as a result of the investigation, the firm failed to provide a private area free from interruptions of coworkers. It was determined that HR Manager (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) failed to provide (b) (6), (b) (7)(C) privacy during (b) (6), (b) (7)(C) Nursing breaks. Mr. Hugg stated that the firm was aware of the requirements for nursing mothers and that the firm allowed multiple break time whenever employees need it. Mr. Hugg stated that the firm understood that the space must be private and free from intrusion. He feels that (b) (6), (b) (7)(C) situation was accidental. (b) (6), (b) (7)(C) has a responsibility to ensure that the door was locked prior to nursing. Attorney Hugg feels that there is no reason to believe that the intrusion that took place twice by two different employees (b) (6), (b) (7)(C) was not accidental. Nevertheless, the employer will comply the law by providing reasonable break time and a place other than a bathroom that is shield from view and intrusion of coworkers or the public.

Civil money penalties and liquidated damages were not applicable for this investigation. (b) (6), (b) (7)(C) was notified the result of the investigation.

Publication provided: HRG, Fact Sheet 28D, 44, 73, and 77A.

Recommendation: It is recommended that this case be administratively closed.

Future contact/correspondence:

Joseph R. Hugg (Corporate Counsel)

1000 Lowe's Boulevard

Mooresville, NC 28117

Ph: (704) 758-0311

Email: joe.r.hugg01@lowes.com

(b) (6), (b) (7)(C)

Wage and Hour Investigator

3/21/2018

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1848171 Originating District: Columbia SC District Office
Local Filing Number: 2018-159-01923 Investigating District: Columbia SC District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 03/12/2018
Assignment Date: 03/14/2018

Employer Information

Trade Name: Circle-K Legal Name: Circle K Stores Inc
Address: 1839 Celanese Rd EIN: 74-1149540
County: York
NAICS Code: 447110
Rock Hill, SC29732 No. Of Employees: (b)

Investigation Information

Period Investigated From: 02/22/2018 BNPI:
To: 05/17/2018 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☐
Compliance Status: Compliance (no violations found) Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

Hours: 20. Cvg: 3(s)(1)(a). FLSANM cvg: more than 50 ee's enterprise wide. Vio: No violations. WHI traveled to est viewed nursing rm and discussed with (b)(6) ER policy change wwas company wide and did not only affect (b)(6) ER ATFC Please close file admin.

Pubs: #44, #73, HRG

WHI Signature: _____ Date: 07/02/2018

Reviewed By: _____ Date: _____

FLSANM NARRATIVE

Circle K Stores, Inc
DBA: Circle K #8401
1839 Celanese Rd.
Rock Hill, SC 29732
Tel (803) 366-4108
Manager: Julie Cross

EIN: 74-1149540

Circle K Stores, Inc. Southeast Division
2550 W. Tyvola Rd. Suite 200
Charlotte, NC 28217
HR Manager: Lisa Hunter

Reason for Investigation: This investigation was initiated (b) (7)(E) (b) (6), (b) (7)(C) the employer was retaliating against (b) (6), (b) (7)(C) for being a nursing mother. (b) (6), (b) (7)(C) (b) (7)(E).

History: This is the first investigation conducted on Circle K #8401. Circle K Stores, Inc has a history of investigations across the country (see Exhibit D-3.)

MODO Information: Circle K Stores, Inc dba Circle K #8401 is a full service gas station. The headquarters is located in Tempe, AZ. The Phoenix District Office is the DO responsible for this geographic area. (b) (7)(E) (see Exhibit C-2 and D-1.) (b) (7)(E)

Ownership: The President of Circle K Stores, Inc is Geoffrey C. Haxel and the Vice-President is Kathy Cunningham (see Exhibits C-1 and C-2.)

Nature of Business: The general purpose of the subject firm is gas station and convenience store. The enterprise was established on 06/10/1986 in South Carolina (see Exhibit C-1.) The enterprise has 420 locations in the Southeast Division (see Exhibit C-4.)

Section 3(d) employer: Ms. Julie Cross (Store Mgr) meets the definition of an employer under Section 3(d). Ms. Cross is at the establishment daily to conduct operations of the business; she hires and fires employees, directs the work of 9 employees, and makes financial decisions for her location. Therefore, she is the Section 3(d) employer under the Act (see Exhibits B-1 through B-3 and C-1.)

COVERAGE

Enterprise Coverage Section 3(s)(1)(A):

This location of the firm currently employs (b) full-time and part-time employees (see A-0 Exhibits and C-1.)

The employer did not provided specific financial information for the enterprise however, this employer did issue a letter indicating they did not dispute coverage (see Exhibit D-4.)

Enterprise Coverage Section 3(s)(1)(A):

The ADV for each of the years this location has been operating is as follows:

2017 \$ 500,000.00+

2016 \$ 500,000.00+

(See Exhibits C-1 and C-3.)

The firm has at least two full time employees handled goods that moved through interstate commerce i.e. credit card machine (see Exhibits C-1.)

FLSANM Coverage: All employees at the store location were hourly employees, and therefore not

exempt from section 7 of the FLSA. Therefore, (b) (6), (b) (7)(C) was covered under FLSANM. Furthermore, the employer has more than 50 employees working for the enterprise, and did not claim any undue hardship for providing nursing time.

Period of Investigation: February 22, 2018 through May 17, 2018

Investigation Tool: This investigation is a limited investigation, limited to the period of (b) (7)(E). The investigation consisted of establishment visit, interviews, and payroll and time records check.

EXEMPTIONS

13(a)(1)

The firm claimed no exemptions for this location. All employees were paid hourly and received the overtime premium payment for the hours over 40 in a workweek (see Exhibits A-0.)

STATUS OF COMPLIANCE

Investigative Result of (b) (6), (b) (7)(C) (b) (7)(E) (b) (6), (b) (7)(C) (b) (7)(E). (b) (6), (b) (7)(C) (b) (7)(E) the employer did not provide a space for (b) (6), (b) (7)(C) to express and that (b) (6), (b) (7)(C) work schedule was changed after (b) (6), (b) (7)(C) returned to work, and (b) (6), (b) (7)(C) was moved to the night shift. This WHI contacted (b) (6), (b) (7)(C) before the establishment visit and (b) (6), (b) (7)(C) stated after (b) (6), (b) (7)(C) (b) (7)(E) the store manager made the stock room the “expressing room.” This WHI toured the room and it was a large space with no windows and a lock on the door for privacy. It also had a refrigerator where milk could be stored and a lactation sign that could be hung on the door when it was in use. This WHI also inquired about the change in work schedule. The store manager stated that it was a corporate decision for all store managers to work the morning 1st shift. Then assistant managers would take the remaining shifts with the non-management staff. WHI viewed the email which was sent to all store locations. (b) (7)(E) it was determined that the company policy did not appear to be a form of retaliation against (b) (6), (b) (7)(C) (see Exhibit D-5.) (b) (6), (b) (7)(C) was notified of the case outcome.

Pay Practice: The employer currently pays all employees on a weekly basis. The workweek starts on

Friday and ends on Thursday. The firm employs (b) full-time and part-time employees (see Exhibit A-0.)

Section 206 (MW): No minimum wage violations were disclosed. WHI reviewed payroll and time records for the employer. Employees were given 2 uniform shirts for free and training time is paid. All factors indicate current compliance with minimum wage laws (see Exhibit A-0.)

Section 207 (r)(1)(B): No nursing mother violations were disclosed. A tour of the establishment found that the employer did have private space for employees to express milk. The space could be locked and would be free from intrusion. Furthermore, the employer did not deny the employee time to express milk. Therefore, no violation was found.

Section 207 (OT): No overtime wage violations were disclosed. WHI reviewed payroll and time records for the employer and overtime is paid correctly and in the period in which it was worked. All factors indicate current compliance with minimum wage laws (see Exhibit A-0.)

Section 211 (RK): No recordkeeping violations were disclosed. All factors indicate current compliance with recordkeeping (see Exhibit A-0.)

Section 212 (CL): No child labor violations were disclosed. The employer did not currently have any 14-15 year olds working at the establishment.

FMLA: Family Medical Leave Act: Coverage under the FMLA was established as the employer did continuously employ more than fifty employees within the current or preceding calendar year. This WHI limited the investigation to the issues of (b) (6), (b) (7)(C).

DISPOSITION

A final conference was held on Friday, June 29th via telephone with Human Resource Manager. WHI (b) (6), (b) (7) represented the Division. An overview of the investigation process and a general discussion of the Fair Labor Standards Act were conducted that included the following topics: coverage, minimum wage, overtime, recordkeeping, exemptions, and child labor. Items bolded were discussed in detail.

Ms. Julie Cross Smith was given the Handy reference guide during the initial conference on 05/23/2018.

Regarding Section 206: WHI (b) (6), (b) (7)(C) informed the employer that no minimum wage violations were found.

Regarding Section 207NM: WHI (b) (6), (b) (7)(C) discussed the FLSANM regulation with the employer and explained that all the stipulations must be followed. (b) (6), (b) (7)(C) stated that they would correct any issues immediately should an employee complain in the future.

(b) (7)(E)

However, the WHI was able to continue the rest of the investigation.

Firm's approach for immediate and future compliance:

Section 16(e):

The firm was advised of the potential assessment of CMPs for future violations. WHI stressed the importance of maintaining compliance. The employer understood that in the event that the Department of Labor conducts another investigation of employer's establishment and violations of Section 206 & 207 are found, Civil Money Penalties can be imposed as repeated or willful, and the employer understood.

Recommendations:

Please close administratively.

Notification: (b) (6), (b) (7)(C) notified on 06/29/2018 of case outcome.

Circle-K Case ID: 1848171

Publications Provided: FLSA, HRG, OT; fact sheet #044, #73;

All correspondence to:

Lisa Hunter
2550 W. Tyvola Rd. Suite 200
Charlotte, NC 28217

(b) (6), (b) (7)(C)

Wage Hour Investigator
06/29/2018

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1848349 Originating District: Jackson MS District Office
Local Filing Number: 2018-208-03052 Investigating District: Jackson MS District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 03/14/2018
Assignment Date: 04/05/2018

Employer Information

Trade Name: Koch Foods Legal Name: Koch Foods of MS LLC
Address: 410 M.S. Koch Drive, A100 EIN: 36-4483973
Morton, MS39117 County: Scott
NAICS Code: 112320
No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 07/02/2016 BNPI:
To: 06/30/2018 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Full Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

Total Violations Under FLSA: 1 \$0.00

WHISARD Compliance Action Report

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FMLA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FMLA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	
Total Violations Under FMLA:	4						\$0.00

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

77hrs. 3(s)(1)(A). FC held on 7/25/2018 over the phone w/ Attorney Hall. Discussed the provisions and policy on Nursing Mothers. No viol was found in Sec 206. Sec 207 - er provided space & reasonable break time for a nursing mother. ER does not provide written guid in EE Hbk to address nursing mothers. An updated policy will be dev to address this issue. Sec 211 - er failed to post updated notices .Sec 212 - no minors under 18 empld. FMLA - no written policy. Act expld. ER ATC. [REDACTED] assd on 7/26/18. RA cl

WHI Signature: _____ Date: 07/31/2018

Reviewed By: _____ Date: _____

FLSA /Nursing Mothers NARRATIVE REPORT

Koch Foods of MS, LLC d/b/a
Koch Foods
410 Koch Drive A 100
Morton, MS 39117
601-732-3174
EIN# 36-4483973

COVERAGE: The subject employer is subject to the Fair Labor Standards Act and is covered under 3(s) (1) (A) Enterprise coverage for the entire investigation period. The subject employer engages in the business of processing, packaging and preparing poultry to be shipped to various stores for consumer purchasing. This company has been in operation since November 2001 (see exhibit C-1-a). There are 12 additional locations in Mississippi (see exhibit C-5). The subject establishment is owned by Koch Foods Incorporated, 1200 W. Higgins Road, Suite 100, Park Ridge, Illinois 60668. The officer of Koch Foods of Mississippi is Joseph C. Grendys (see exhibit C-5). Individual Coverage was applicable to the employees because they engage in a variety of duties which involve preparing, processing, shipping and handling poultry for interstate commerce. This location is the Prepared Plant site of Koch Foods of Mississippi. There are (b) (4) employees employed (see exhibit C-1-c). The employees employed are unionized under the United Food and Commercial Workers, Local 1529 AFL-CIO, CLC (see exhibits C-1 and D-5).

Mr. Joseph C. Grendys is the 3(d) employer for the subject establishment. This is a partnership in which each partner exercises common control, oversee all locations, have one unified payroll, and one EIN number. The subject employer is not a franchise (see exhibits C-1-a and C-5).

The subject employer retained Attorney Jennifer G. Hall, Shareholder / Attorney, Baker Donelson, Bearman, Caldwell & Berkowitz, PC, One Eastover Center, 100 Vision Drive, Suite 400, Jackson, MS 39211, 601-351-2483; 601-720-4522 (cell); and (fax- 601-592-7483 (see exhibit E-1).

The ADV is greater than \$500,000 as confirmed by Attorney Jennifer Hall. Attorney Hall prepared and presented written certification that the annual gross volume of sales for the Prepared Plant in 2017, 2016 and 2015 exceeded the requisite \$500,000 per year (see Letter

dated July 5, 2018 in exhibit D-8). The overall ADV for the enterprise is over (b) (4) annually.

PERIOD OF INVESTIGATION: June 12, 2016 to June 15, 2018

MODO: (b) (7)(E) (see exhibit D-0 thru D-0-b).

PRIOR HISTORY: There was no prior history for the subject employer. This is the first investigation.

EXEMPTIONS 213(a): The 541.100, 541.200 and 541.300 Exemptions were applicable to 50 employees who are employed in a variety of management positions which require supervising, management activities, the use of discretion and independent judgement and learned professions. The employees are paid weekly salaries of (b) (4) / weekly wage or higher (see exhibits D-2 thru D-2-a). Each employee supervises at least 2 or more employees on their respective shifts, perform the primary duty of managing the day to day operations of their respective shifts, spends more than half of their time in management activities and has the authority to hire and/or fire employees or recommend the hiring and or firing of an employee. Some of the employees perform office or non-manual work which is directly related to the management or general business operations of the employer or the employer's customers and exercise discretion and independent judgement with respect to matters of significance. Some of the employees perform work which requires advanced knowledge which requires prolonged course of specialized intellectual instruction (see exhibits D-2 thru D-2-a).

STATUS OF COMPLIANCE: This case was assigned (b) (7)(E) (b) (6), (b) (7)(C) was denied (b) (6), (b) rights to express (b) (6), (b) milk and was therefore terminated. (b) (6), (b) (7)(C) further (b) (7)(E) (b) (6), (b) was instructed to express (b) (6), (b) milk only during lunch hours and to use the bathroom to express (b) (6), (b) milk. (b) (7)(E) based on attendance records presented, a discussion with the Ramona Bass, HR Complex Manager and Attorney Jennifer Hall (see exhibits D-8 thru D-8-f and D-8-j thru D-8-w).

EMPLOYEE MISCLASSIFICATION: There was no misclassification of employees.

FAMILY AND MEDICAL LEAVE ACT: The subject employer is covered under the provisions of the Family and Medical Leave Act because there are more than 50 employees on payroll for 20

or more weeks in the preceding calendar year. The employees are eligible at this location because they work at a location where at least 50 employees are employed at the location or within 75 miles of the location (see exhibits C-1-f and D-1 thru D-1-k).

SECTION 206: Minimum Wage: There was no violation determined in this area of the law during this investigation. The employees employed by the subject employer are paid at least \$7.25 per hour. The lowest hourly rate paid is (b) (4) per hour (see exhibit C-1-c and D-1 thru D-1-k).

SECTION 207: Maximum Hours: There was no violation determined in this area of the law during this investigation. A review of the payroll records confirmed compliance in this area of the law (see exhibits D-1 thru D-1-k).

SECTION 207(r) (1) (A): Break Time for Nursing Mothers: The subject employer allows an employee break time to express milk as needed. The employee can extend their lunch break and/or take breaks as needed during their working hours to express milk. As stated by Attorney Hall, the subject employer is in the process of developing a written policy of procedures for Nursing Mothers (see exhibit C-4-a). An interview statement taken from (b) (6), (b) (7)(C) revealed that (b) (6), (b) (7)(C) would express (b) (6), (b) (7)(C) milk on (b) (6), (b) (7)(C) lunch break. (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) needed an extra 15 minutes (see exhibit B-1). (b) (6), (b) (7)(C) was not terminated due to (b) (6), (b) (7)(C) expressing (b) (6), (b) (7)(C) milk, (b) (6), (b) (7)(C) accumulated points based on (b) (6), (b) (7)(C) attendance which caused (b) (6), (b) (7)(C) to lose (b) (6), (b) (7)(C) job (see exhibits D-8-j thru D-8-w).

Section 207(r) (1) (B): Space for Nursing Mothers: The subject employer provides a space to accommodate nursing mothers who need to express milk while at work. The subject employer has available the Human Resource Coordinator's Office. This space is "shielded from view and free from intrusion". The door can be locked and unlocked by the nursing mother while (b) (6), (b) (7)(C) is expressing milk. There is a refrigerator in the office for the nursing mother to store the milk until (b) (6), (b) (7)(C) has completed (b) (6), (b) (7)(C) work day (see exhibits D-3 thru D-3-c). (b) (6), (b) (7)(C) was informed by the subject employer to express (b) (6), (b) (7)(C) milk in the assigned area; however, (b) (6), (b) (7)(C) chose to go to the Safety's Coordinators area to express (b) (6), (b) (7)(C) milk (see exhibit C-4-a). An interview statement taken from (b) (6), (b) (7)(C) revealed that when (b) (6), (b) (7)(C) returned to work after the birth of (b) (6), (b) (7)(C) child, (b) (6), (b) (7)(C) would pump in the back corner of the Nurse's Station which is shaped like an "L" or the bathroom in the nurse's office. If the nurse was not there, (b) (6), (b) (7)(C) could not express (b) (6), (b) (7)(C) milk (see exhibit B-1). (b) (6), (b) (7)(C) also stated "that (b) (6), (b) (7)(C) supervisor told (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) told (b) (6), (b) (7)(C) that it was personal and that (b) (6), (b) (7)(C) needed to use (b) (6), (b) (7)(C) lunch break to pump" (see exhibit B-1).

SECTION 211: Collection of Data: Section 211(c): There was no violation was determined in this area of the law. The subject employer maintains an accurate record of daily, weekly and premium hours worked by employees.

A violation was cited due to the required notices that were displayed were out of date. The subject employer posts the notices in a conspicuous space in the establishment as per 516.4. In a letter received from Attorney Hall on July 5, 2018, she stated that she located the J.J. Keller Federal and Mississippi Employment Laws poster, with a compliance date of August 2016 in the training room at the Prepared Plant (see exhibit D-8, D-8-a D-8-g thru D-8-i). This letter was received after my site visit on June 28, 2018. A RK violation was charged due to the poster was not visible during the site visit.

SECTION 212: Child Labor: The subject employer does not employ minors under 18 years of age.

FAMILY AND MEDICAL LEAVE ACT: Violations occurred in this area of the law in the following areas:

The subject employer does not provide a written General or Specific Notice on Family and Medical Leave.

Notice of Eligibility – 825.300 (b) – The FMLA policy of the subject employer did not provide a Notice of Eligibility for employees.

Notice of Rights and Responsibilities – 825.300 (c) – The FMLA policy of the subject employer did not provide the right and responsibilities to employees.

Designation Notice – 825.300 (d) – The FMLA policy of the subject employer did not provide a designation notice for employees.

The policy of the subject employer did not provide a Certification of a Serious Health Condition / Serious Injury or Illness / Qualifying Exigency (see exhibits C-2 thru C-2-e).

DISPOSITION: The final conference was conducted via telephone on July 26, 2018 with Attorney Jennifer Hall and WHI (b) (6), (b) (7)(C) over the phone (see exhibits C-3 thru C-3-c).

The discussion began with an explanation of the following- MW is paid at \$7.25 per hour as of July 24, 2009. OT is paid for hours worked above 40 hours in a workweek. RK requires that all daily, weekly, and premium records of hours worked are maintained. CL applies to minors under the age of 18 years of age. There are 17 Hos that apply to minors under the age of 18 years of age.

Next, Individual and Enterprise Coverage were discussed briefly. Attorney Hall was advised that Individual Coverage applies to an individual who moves, handles, or otherwise work on goods that have moved in or been produced for such commerce. Enterprise Coverage applies to a business that grosses an annual dollar volume of \$500,000 or more a year.

Attorney Hall was advised that the subject establishment is Enterprise Covered.

A brief explanation of the changes in the 541 Exemption was made to Attorney Hall. WHI (b) (6), (b) (7)(C) stated that as of August 23, 2004, the weekly wage increased to \$455 a week. In addition, the employee must engage in management activities of hiring, firing, supervising, etc. A brief explanation of the 541.603(d) was explained concerning the irregular deductions from a salaried employees pay.

Next, the provisions of the Family and Medical Leave Act were explained to Attorney Hall. WHI (b) (6), (b) (7)(C) stated that the enterprise is covered under the Family and Medical Leave Act because there are at least 50 employees on payroll for 20 or more weeks in the preceding calendar year. The employees are eligible because they work at a location or a location within a 75 mile radius that has 50 or more employees employed.

There were no comments made by Attorney Hall at this point.

Next, the violations were discussed with Attorney Hall. WHI (b) (6), (b) (7)(C) stated that all areas of the law were reviewed; however, emphasis was placed on the Nursing Mothers provisions of the law. WHI (b) (6), (b) (7)(C) began by addressing then nursing mother while at work. This time is not compensable to the employee for receiving such time for this purpose.

WHI (b) (6), (b) (7)(C) added that (b) (6), (b) (7)(C) was terminated due to (b) (6), (b) (7)(C) attendance and not due to requesting time to express milk while at work. (b) (6), (b) (7)(C) accumulated points before maternity leave and after returning from maternity leave (see exhibits D-4-d, D-8-j thru D-8-w).

Next, WHI (b) (6), (b) (7)(C) explained the law on Space for Nursing Mothers. WHI (b) (6), (b) (7)(C) stated that

adequate space must be provided to a nursing mother to express milk. WHI (b) (6), (b) (7)(C) stated that a bathroom is not an adequate space because it is not shielded from view, free from intrusion and is not a functional space that has a refrigerator to store the milk for later use.

Next, WHI (b) (6), (b) (7)(C) emphasized to Attorney Hall that all posters must be kept up to date per 516.4 and posted in a conspicuous place. WHI (b) (6), (b) (7)(C) reviewed the posters which were out of date.

There was no comment made by Attorney Hall at this point.

Next, Future Compliance was discussed and assured by Attorney Hall. WHI (b) (6), (b) (7)(C) stated that the Handy Reference Guide was provided to Attorney Hall during the Initial Conference on June 28, 2018. The additional WH-Publications were mailed to Attorney Hall on July 25, 2018 - 778, 785, 541, 516, CL-101, 825, Youth Rules Bookmark, and Fact Sheets #44, #28D and 15A (see exhibit C-3-b).

Next, Attorney Hall stated that the following steps will be taken to ensure compliance for the future

1. Committed to providing reasonable break time to nursing mothers;
2. Update policy for Nursing Mothers and the use of break time;
3. Provide the room for nursing mothers to express milk;
4. Employer will conduct individual discussions with nursing mothers upon return from maternity leave;
5. Continue to pay the applicable MW, OT, CL and maintain adequate RK and comply with the CL provisions (see exhibit c-3-b).

The following areas were discussed with Attorney Hall – FMLA – the company is covered under the FMLA provisions and the employees are eligible. MW/OT CMP – this is the first full investigation; (b) (7)(E) . 53c21 – there were no employees due back wages during this investigation.

Attorney Hall confirmed that the subject employer is not in litigation or bankruptcy.

LIQUIDATED DAMAGES: There were no liquidated damages assessed for this investigation.

(b) (7)(E) UPDATE: (b) (6), (b) (7)(C) was advised on July 26, 2018 of the case status. (b) (6), (b) (7)(C)

was mailed a "Contact Letter" on April 23, 2018 after several attempts were made to contact (b) (6), (b) (7)(C)

—
RECOMMENDATION: (b) (7)(E)

(b) (7)(E) I recommend that this case is closed administratively with no further action.

All correspondences should be mailed to the following –

Mr. Joseph C. Grendys
Manager
Koch Foods Incorporated
1200 W. Higgins Road, Suite 100
Park Ridge, Illinois 60668

With a copy mailed to -

Jennifer G. Hall
Shareholder
Baker Donelson, Bearman, Caldwell & Berkowitz, PC
One Eastover Center
100 Vision Drive, Suite 400
Jackson, MS 39211

(b) (6), (b) (7)(C)
WHI

Date

WHISARD Compliance Action Report

U.S. Department of Labor Wage and Hour Division

Case ID: 1850344 Originating District: Louisville KY District Office
Local Filing Number: 2018-235-00187 Investigating District: Louisville KY District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 04/05/2018
Assignment Date: 04/05/2018

Employer Information

Trade Name: Conduent Inc. Legal Name: Conduent Commercial Solutions, LLC
Address: 745 W. New Circle Road EIN: 87-0476606
Lexington, KY 40509 County: Fayette
NAICS Code: 561990
No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 05/19/2016 BNPI: 0
To: 05/18/2018 Reinvestigation: ☒
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CCPA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CCPA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

EPPA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
EPPA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FMLA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FMLA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

70.50 hrs. (b) (7)(E) Call Center. Corp Office. 100 Campus Drive, Florham Park, New Jersey, 07932. 90 K EE;s nationwide. EE engaged in IC. 339 branch loc. ADV 16, 17: (b) (4) and (b) (4) FLSA 203(s)(1)(a) app. FLSNM: Vio. Failure to provide sufficient space. FLSA: No vio CL: No vio FMLA: not rwd. CPPA: No vio EPPA: No vio ER ATC. ER provided HRG w SBREFA ref at IC

FS: 16, 17A, 21,22, 23,28D,30,36.43,44,73

WHI Signature: _____ Date: 09/04/2018

Reviewed By: _____ Date: _____

BREAK TIME FOR NURSING MOTHERS NARRATIVE

Legal Identity: Conduent Commercial Solutions, LLC

Employer Trade Name: Conduent

Street Address: 745 West New Circle Road

City, State, Zip Code: Lexington, KY 40509

Phone: 859.389.3744

Employer Identification Number: 87-0476606

MODO

The New Jersey District Office (NJDO) is the MODO for the enterprise. (b) (7)(E)

(see exhibit: D-1-D-1-h).

HISTORY

Case ID: 1778367

Employer failed to pay pre shift and post shift work which resulted in overtime violation. Employer failed to maintain accurate time records for period of investigation. 1301 employees were found due \$114,148.60. Employer agreed to comply and agreed to pay (see exhibit: D-2).

Case ID: 1798340

Employer failed to pay pre-shift, travel time and overtime hours to employees. Employer failed to maintain accurate hours for period of investigation. 4 employees were found due \$1828.32 in back wages to included liquidated damages. Employer agreed to comply and agreed to pay (see exhibit: D-3).

Case ID: 1835967

Case was administratively closed per the request of (b) (6), (b) (7)(C) asserted that she would pursue (b) (6), (b) (7)(E) with an alternate agency (see exhibit: D-4).

Case ID: 1849047

(b) (7)(E) (b) (6), (b) (7)(C) (b) (7)(E) the employer failed to pay overtime for hours worked over 40 in a workweek. (b) (6), (b) (7)(E) also (b) (7)(E) a recordkeeping violation. (b) (7)(E) (see exhibit: D-5-D-5-a).

Case ID: 1849109

(b) (7)(E) Overtime violation. 1 Employee due \$793.49. Employer agreed to comply and agreed to pay(see exhibit: D-6).

REASON FOR INVESTIGATION

(b) (6), (b) (7)(C) **(b) (7)(E)** (see exhibit B-4-B-4-a). **(b) (7)(E)** employer failed to provide **(b) (6), (b) (7)(C)** access to a break room so that **(b) (6), (b) (7)(C)** could express milk. **(b) (6), (b) (7)(C)** had expressed milk in supply closet. **(b) (7)(E)** had expressed milk in a bathroom. **(b) (6), (b) (7)(C)** also **(b) (7)(E)** had expressed milk in an office with an uncovered window. **(b) (6), (b) (7)(C)** **(b) (7)(E)** was suffering from a dwindling milk supply. **(b) (6), (b) (7)(C)** requested family medical leave in order to bond with **(b) (6), (b) (7)(C)** child and build up **(b) (6), (b) (7)(C)** milk supply. **(b) (6), (b) (7)(C)** **(b) (7)(E)** requested a leave of absence while **(b) (6), (b) (7)(C)** family medical leave request was being processed. **(b) (6), (b) (7)(C)** asserted that **(b) (6), (b) (7)(C)** was terminated by **(b) (6), (b) (7)(C)** employer for attendance due to absences incurred while on **(b) (6), (b) (7)(C)** leave of absence. The investigation **(b) (7)(E)** **(b) (6), (b) (7)(C)** **(b) (7)(E)** pertaining to having access to the break room. **(b) (6), (b) (7)(C)** was denied access on multiple occasions to a break room that was shielded from view. **(b) (7)(E)** pertaining to the family medical leave request were deferred to the New Jersey District Office (see exhibit: D-1-D-1-h).

COVERAGE

The subject employer operated a call center providing business processing services to small, medium and large businesses and government entities (see exhibit: C-2-a). The business was registered with the Kentucky Secretary of State on 03/14/2003 as a limited liability company(see exhibit C-1). It should be noted that Conduent Commercial Solutions, LLC. is a subsidiary of Conduent Business Services, LLC. Conduent Business Services, LLC is owned by Conduent Incorporated (Inc.).The corporate office is physically located at 100 Campus Drive, Florham Park, New Jersey, 07932 (see exhibit: C-2). The following individuals hold corporate offices within the corporation: Mr. Ashok Vemur, President, Mr. Brian Walsh, Manager Ms. Cara Shore, Chief Financial Officer and Mr. J. Michael Peffer, Secretary (see exhibit C-2-a). The business is part of an enterprise that has locations worldwide: throughout the United States, Guatemala, Mexico, the Phillipines, Jamaica, and India(see exhibit C-2-p). The real estate portfolio of the corporation is comprised of 330 leased properties and 9 owned properties (see exhibit C-2-q). The branch locations operated under various trade names and federal employer identification numbers. However, the branch locations are owned and operated by the same corporate entity, Conduent Inc. The business activities conducted by the multiple branch locations were found to be related and were joined through a unified operation for a common business purpose and were considered part of the same enterprise (29 CFR 779.204(c)).

According to information provided by the employer during the initial conference, the annual dollar volume (ADV)

for the enterprise for calendar year 2017 was (b) (4) and for calendar year 2016 was (b) (4) (see exhibit C-2-m-C-2-n). It should be noted that Conduent Inc., was previously owned by the Xerox Corporation. Conduent Inc., finalized its separation from Xerox Corporation effective 12/31/2016 (C-2-o). As a result, there was no separate ADV reported for the subject employer for calendar year 2015. The employer was found to have employees routinely engaged in interstate commerce. Employees provided customer service pertaining to inquiries related to Apple Products pertaining to consumer electronics, computer software and online services (see exhibits B-1-B-10-a). Employees responded to telephonic and email inquiries for customers throughout the United States. It was determined that FLSA Section 203(s)(1)(A) was applicable to the enterprise and that all employees would be covered under the provisions of the FLSA.

It should also be noted that in accordance the Patient Protection and Affordable Care Act, and FLSA Section 207(r) was applicable and the break time for nursing mother provisions were applicable to this employer.

Mapping Opportunity:

It should be noted the subject employer is part of an enterprise that has branch locations throughout the United States and Europe. The enterprise employs approximately (b) (4) employees directly. It should be noted that the enterprise is regulated by numerous governmental laws to include: securities law, employment law, Employment Retirement Income Security Act, governmental entity contracting, servicing and procurement law, intellectual property law and environmental law (see exhibits C-2-r). The enterprise reached a settlement agreement with the State of New York regarding the Health Enterprise platform project.

EXEMPTIONS

29 CFR 541.100/ Section FLSA 213(a)(1)

The subject employer claimed the executive exemption for the following individuals: (b) (6), (b) (7)(C), Operations Manager, (b) (6), (b) (7)(C), Operations Manager, (b) (6), (b) (7)(C), Training Manager and (b) (6), (b) (7)(C) Director of Operations.

Name	Job Title	Salary	Weekly Salary
(b) (6), (b) (7)(C)	Operations Manager	(b) (6), (b) (7)(C)	
(b) (6), (b) (7)(C)	Operations Manager		
(b) (6), (b) (7)(C)	Learning Development Supervisor		
(b) (6), (b) (7)(C)	Director Of Operations		

Employee interview and employment records indicated that (b) (6), (b) (7)(C) were actively involved in managing the daily operations of the subject establishment (see exhibits B-1-B-10-a and C-2-c). It should be noted that the subject establishment employed a workforce of (b) (6), (b) (7)(C) employees (see exhibit: C-2-f). The Operations Managers were responsible for directly supervising 16 Customer Service Supervisors. The Learning Development Supervisor was responsible for directly supervising 5 Customer Service Associates. The Director of Operations was directly responsible for the Operations Managers. The aforementioned individuals had the ability to make hiring and firing decisions regarding personnel, took disciplinary action against employees and were responsible for the day to day operations of the call center environment (see exhibits: B-1-B-10-a and C-2-c). In accordance with 29 CFR 541.100, the Operations Managers, Learning Development Supervisor and Director of Operations were found to be involved in management, paid a guaranteed salary in excess of \$455.00 and involved in the direct supervision of two full time employees. The investigation found that the executive exemption was applicable for the period of investigation.

STATUS OF COMPLIANCE

On May 7, 2018 (b) (6), (b) (7)(C) provided this investigator with (b) (7)(E)

Important Dates Dealing with (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) Nursing Mothers case:

It should be noted at the time of (b) (6), (b) (7)(C) delivery (b) (6), (b) (7)(C) was ineligible for FMLA. (b) (6), (b) (7)(C) was granted maternity leave under the Americans with Disabilities Act Amendments Act (ADAAA). (b) (6), (b) (7)(C) delivered (b) (6), (b) (7)(C) (see exhibits: D-9- D-10-m).

(b) (6), (b) (7)(C) At that time (b) (6), (b) (7)(C) advised (b) (6), (b) (7)(C), Customer Service Supervisor and (b) (6), (b) (7)(C), Operations Manager that (b) (6), (b) (7)(C) would be expressing milk and needed accommodations (see exhibits: B-4-B-4-a and C-2-k).

The call center in which (b) (6), (b) (7)(C) worked was moved from 101 Yorkshire Boulevard Lexington, KY 40509 to

745 West New Circle Road Lexington, KY 40511 on 12/08/17.

(b) (6), (b) (7)(C) was unable to access the Nursing Mother's room at the 745 West New Circle Road Lexington, KY 40511 location on 12/14/17. Security was unable to locate the key to unlock the Nursing Mother's Room. (b) (6), (b) (7)(C) was unable to express milk (see exhibit: B-4-B-4-a and C-2-k).

(b) (6), (b) (7)(C) was unable to access the Nursing Mother's room at the 745 West New Circle Road Lexington, KY 40511 location on 12/16/17. Another employee was utilizing the room. (b) (6), (b) (7)(C) nursed in a manager's office. The door had a window overlooking the call floor. The window wasn't covered (see exhibit: B-4-B-4- and C-2-k).

(b) (6), (b) (7)(C) at the 745 West New Circle Road Lexington, KY 40511 location. (b) (6), (b) (7)(C) met with (b) (6), (b) (7)(C), Site Manager. (b) (6), (b) (7)(C) was informed by (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) should cover the window in door in order to ensure (b) (6), (b) (7)(C) privacy (see exhibit: B-4-B-4-a and C-2-k).

On 12/22/17 at the 745 West New Circle Road Lexington, KY 40511, (b) (6), (b) (7)(C) began expressing breast milk on the call center floor (see exhibit: B-4-B-4-a and C-2-k).

On 12/27/18 at the 745 West New Circle Road Lexington, KY 40511, (b) (6), (b) (7)(C), Site Manager met with (b) (6), (b) (7)(C). (b) (6), (b) (7)(C) advised (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) was inconsistent with regard to (b) (6), (b) (7)(C) (b) (7)(E) regarding privacy and expressing breast milk. (b) (6), (b) (7)(C) was informed that (b) (6), (b) (7)(C) was unable to express breast milk on the call center floor (see exhibit: B-4-B-4-a and C-2-k).

(b) (6), (b) (7)(C) requested FMLA Leave to bond with (b) (6), (b) (7)(C) and in order to build up (b) (6), (b) (7)(C) milk supply (b) (6), (b) (7)(C) (see exhibit B-4-B-4-a, C-2-k and D-7-D-8-k).

(b) (6), (b) (7)(C) received the Leave of Absence notice and Patient Rights and Responsibilities on 01/30/2018 via email (see exhibit B-4-B-4-a, C-2-k and D-7-D-8-k).

(b) (6), (b) (7)(C) also received the FMLA eligibility notice and Patient Rights and Responsibilities on 02/02/2018 via email (see exhibit B-4-B-4-a, C-2-k and D-7-D-8-k).

(b) (6), (b) (7)(C) FMLA Leave request was denied on 2/20/18 due to (b) (6), (b) (7)(C) failure to provide the health care provider medical certification (see exhibit B-4-B-4-a, C-2-k and D-8-i-D-8-k).

(b) (6), (b) (7)(C) employment was terminated on 02/24/18 due to (b) (6), (b) (7)(C) attendance.

Insufficient Break Time-Section 207(r)(1)(A)

A review of the statement provided by (b) (6), (b) (7)(C) and the statement provided by the employer during the initial conference indicated that (b) (6), (b) (7)(C) was provided with a reasonable break time to express breast milk for (b) (6), (b) (7)(C) nursing child. The employer was deemed to have been in compliance with FLSA Section 207(r)(1)(A) (see exhibits: B-4-B-4-a and C-2-k).

Insufficient Space-207(r)(1)(B)

A violation occurred when the employer failed to provide (b) (6), (b) (7)(C) with a place, other than a bathroom, that was shielded from view and free from intrusion from co-workers and the public, which may be used by an employee to express breast milk. It should be noted that the subject employer does have a room available onsite that is dedicated exclusively for the use of Nursing Mothers. During the initial conference, WHI (b) (6), (b) (7)(C) conducted a tour of the room reserved for Nursing Mothers.

The room itself is private. The door to the room has a lock. The room had a chair. WHI (b) (6), (b) (7)(C) observed a working refrigerator in the room which was dedicated exclusively for the purposes of storing breast milk.

During the site visit, (b) (6), (b) (7)(C), Operations Manager acknowledged that (b) (6), (b) (7)(C) was aware of one instance in which (b) (6), (b) (7)(C) had been unable to access the Nursing Mother's room due to a lost key. (b) (6), (b) (7)(C) explained that alternate accommodations were made for (b) (6), (b) (7)(C) asserted that (b) (6), (b) (7)(C) was provided an office in which (b) (6), (b) (7)(C) could express milk. (b) (6), (b) (7)(C) acknowledged that the room itself had a small window that hadn't been covered. (b) (6), (b) (7)(C) also asserted that (b) (6), (b) (7)(C) could have covered the window if (b) (6), (b) (7)(C) deemed that necessary. (b) (6), (b) (7)(C) acknowledged that (b) (6), (b) (7)(C) had complained in the past about privacy. However, (b) (6), (b) (7)(C) also advised that (b) (6), (b) (7)(C) had publicly expressed milk on the call center floor (see exhibits: B-4-B-4-a, B-6-B-6-a and C-2-k).

WHI (b) (6), (b) (7)(C) explained to (b) (6), (b) (7)(C) that it wasn't (b) (6), (b) (7)(C) responsibility to ensure that the room was suitable for (b) (6), (b) (7)(C) to express milk. (b) (6), (b) (7)(C) reminded attendee's that the employer was required to provide (b) (6), (b) (7)(C) a room other than a bathroom that was shielded from view. WHI (b) (6), (b) (7)(C) also advised that the state laws governing the expression of breast milk in a public place were outside of the enforcement authority of the Wage Hour Division.

(b) (6), (b) (7)(C) asserted that (b) (6), (b) (7)(C) was unaware of any other instance that (b) (6), (b) (7)(C) was unable to access the Nursing Mother's room. (b) (6), (b) (7)(C) acknowledged that (b) (6), (b) (7)(C) wasn't (b) (6), (b) (7)(C) immediate supervisor and wasn't privy to every communication that (b) (6), (b) (7)(C) held with (b) (6), (b) (7)(C) supervisors. (b) (6), (b) (7)(C) also advised that (b) (6), (b) (7)(C) immediate

supervisor, (b) (6), (b) (7)(C) and the site manager, (b) (6), (b) (7)(C) were no longer in the employ of the company (see exhibits: B-4-B-4-a and C-2-k).

(b) (6), (b) (7)(C) advised that (b) (6), (b) (7)(C) was terminated due to (b) (6), (b) (7)(C) attendance. (b) (6), (b) (7)(C) requested a leave of absence and family medical leave simultaneously on 01/30/2018. (b) (6), (b) (7)(C) failed to provide healthcare provider medical certification on 02/20/2018. As a result, (b) (6), (b) (7)(C) absences were retroactively determined to be unexcused and (b) (6), (b) (7)(C) was terminated on 02/24/2018.

Retaliation-215(a)(3)

A review of the statement provided by (b) (6), (b) (7)(C) and the statement provided by the employer during the initial conference indicated that (b) (6), (b) (7)(C) termination was not the result of discrimination and/ or retaliation. (b) (6), (b) (7)(C) termination was attributed to (b) (6), (b) (7)(C) attendance. The employer was deemed to have been in compliance with FLSA Section 215(a)(3) (see exhibit: B-4-B-4-a and C-2-k).

Other Information.

-Kentucky state law *Ky. Rev. Stat. § 211-755 (2006) permits a mother to breastfeed her baby or express breast milk in any public or private location. Requires that breastfeeding may not be considered an act of public indecency, indecent exposure, sexual conduct, lewd touching or obscenity. Prohibits a municipality from enacting an ordinance that prohibits or restricts breastfeeding in a public or private place. (2006 SB 106)*

FMLA

A review of employer records indicated that the subject employer was engaged in commerce and employed a workforce of 50 or more employees for each working day during each of 20 or more calendar workweeks in the current and preceding calendar year. As a result the employer was covered under FMLA and subject to its provisions. It should be noted that the New Jersey District Office (NJDO) is conducting an enterprise wide FMLA investigation. (b) (7)(E)

FLSA

A review of employer records and employee interview statements indicated that the subject employer paid employees in excess of the applicable minimum wage of \$7.25 per hour. Employees were compensated time and a half whenever they worked over 40 hours in the work week. The employer maintained accurate time card and

payroll records. It should be noted that employee interviews indicated that the employer failed to include the incentive pay in the regular rate for the purposes of computing overtime. WHI (b) (6), (b) (7)(C) discussed the overtime computation methodology with the employer during the initial conference. Employees received incentive pay and bonuses based on their customer service survey ratings. The incentives and bonuses were added to the hourly rate of pay, increasing the employee's hourly regular rate of pay. The employer retroactively computed the overtime owed to employees based on the regular rate of pay that included the incentive payment and the bonus payment. The retroactive payment for the incentive pay was coded as RTROT which was the recalculation for the additional overtime attributed to the incentive pay being included in the regular rate. The retroactive payment for the bonus was coded at RTRBN which was the recalculation for the additional overtime attributed to the bonus being included in the regular rate. WHI (b) (6), (b) (7)(C) reviewed employee payroll records and time records and was able to substantiate that the incentive pay and bonuses were included in the regular rate of pay for the purposes of computing overtime. During the site visit, WHI (b) (6), (b) (7)(C) observed that subject employer had the FLSA notice posted in the employee breakroom. The subject employer did not employ any individual under the age of 18 years old during the period of this investigation (see exhibits: A-0-A-0-y, B-1-B-10-a and C-2-C-2-k).

CCPA:

The employer is covered under the CCPA. During the period of the investigation, it was determined that the employer had garnished employee wages for child support and third party debts (see exhibits: C-2-d). The wage garnishments were deducted in compliance with the provisions of the CCPA.

EPPA:

The employer is covered under the EPPA. During the tour of establishment, WHI (b) (6), (b) (7)(C) observed that the subject employer had posted the EPPA notice in the breakroom of the subject establishment (see exhibit: C-2-e).

DISPOSITION

WHI (b) (6), (b) (7)(C) held the final conference on July 30th, 2018 via teleconference with attorney, Mr. Michael Olvera in attendance. WHI (b) (6), (b) (7)(C) reviewed the coverage requirements for employer's subject to Break Time for Nursing Mothers under the FLSA and employees who were entitled to breaks to express milk. WHI (b) (6), (b) (7)(C) also discussed the break times and space requirement afforded to the employees entitled to express milk. WHI (b) (6), (b) (7)(C) explained the possibility of penalty in the event that the investigation determined that in accordance with FLSA Section 215(a)(3) of the FLSA any employee was "discharged or in any other manner discriminated against" because, for instance, he or she had filed a complaint or cooperated in an investigation. It was explained that the impacted individual may file a retaliation complaint with the Wage and Hour Division or may file a private cause of action seeking appropriate remedies including, but not limited to, employment reinstatement, lost wages and an additional equal amount as

liquidated damages.

WHI (b) (6), (b) (7)(C) explained that the investigation substantiated that the employer failed to provide a sufficient space for (b) (6), (b) (7)(C) to express milk. (b) (6), (b) (7)(C) acknowledged that the room that the employer designated for Nursing Mothers was in compliance. However, the investigation substantiated that (b) (6), (b) (7)(C) had been unable to access the room on at least two separate occasions. Moreover, the alternative accommodation provided to (b) (6), (b) (7)(C) was not in compliance. (b) (6), (b) (7)(C) reiterated to Mr. Olvera that the employer was required to ensure that any space made available to the employee was shielded from view and free from intrusion from co-workers and the public. WHI (b) (6), (b) (7)(C) explained that the office space that was provided to (b) (6), (b) (7)(C) was insufficient. The office space possessed a door with a glass window. The glass window was transparent and could be seen from the call center floor.

WHI (b) (6), (b) (7)(C) explained that no back wages or request for reinstatement was being pursued at this time under the Break Time for Nursing Mothers.

WHI (b) (6), (b) (7)(C) also discussed the posting requirements of the FMLA. (b) (6), (b) (7)(C) explained the coverage and eligibility requirements for the employer and employee under FMLA. WHI (b) (6), (b) (7)(C) explained that the employer was covered under FMLA during this investigative period and was subject to its provisions. (b) (6), (b) (7)(C) explained that an enterprise wide FMLA investigation was being conducted by the NJDO and that (b) (6), (b) (7)(C) FMLA (b) (7)(E) would be addressed by the NJDO.

WHI (b) (6), (b) (7)(C) also discussed the coverage provisions under FLSA section 20 3(s)(1)(a). (b) (6), (b) (7)(C) explained that the provisions of the FLSA to include: minimum wage, overtime, recordkeeping, child labor provisions would apply to all non-exempt employees. WHI (b) (6), (b) (7)(C) also discussed the possibility of civil money penalties being assessed in the event the employer violated child labor provisions and/or willfully and repeatedly violated the wage provisions of the Act.

WHI (b) (6), (b) (7)(C) discussed the exemptions under FLSA section 213 (A)(1). (b) (6), (b) (7)(C) reviewed the minimum guaranteed salary and duties test requirement for the executive exemption. WHI (b) (6), (b) (7)(C) explained that the employer must ensure that the duties and salary test are met in order to claim any exemption. WHI (b) (6), (b) (7)(C) explained that the investigation found that the exemptions claimed for (b) (6), (b) (7)(C) were applicable.

WHI (b) (6), (b) (7)(C) next discussed the minimum wage provisions of the FLSA. (b) (6), (b) (7)(C) reiterated that minimum wage was \$7.25 an hour for all compensable hours of work. WHI (b) (6), (b) (7)(C) explained that the investigation found no minimum wage violation for the period of investigation.

WHI (b) (6), (b) (7)(C) also discussed the overtime wage provisions of the FLSA. (b) (6), (b) (7)(C) discussed that the overtime provisions of the act required that employees must be paid time and a half for all hours worked over 40 in a workweek. WHI (b) (6), (b) (7)(C) explained that the investigation found no overtime violation for the period of investigation.

WHI (b) (6), (b) (7)(C) next discussed the record keeping requirements of the FLSA. (b) (6), (b) (7)(C) explained that the general record keeping requirements of the FLSA required the employer to maintain time records for a period of two years and the payroll records for a period of three years. WHI (b) (6), (b) (7)(C) also discussed that the employer is required to post the FLSA notice in the establishment. (b) (6), (b) (7)(C) explained that the investigation found no violation for the period of investigation.

WHI (b) (6), (b) (7)(C) discussed the child labor provisions of the FLSA. (b) (6), (b) (7)(C) reviewed in detail the hours and occupation standards and the child labor hazardous orders. WHI (b) (6), (b) (7)(C) explained that the investigation found that the employer had not employed minors during the period of this investigation. No child labor violations were found for the period of investigation.

WHI (b) (6), (b) (7)(C) also reviewed the CCPA. (b) (6), (b) (7)(C) explained coverage and the limits on the garnishments on employee earnings contingent on the type of debt: consumer, support and federal/state taxes and/or personal bankruptcy. WHI (b) (6), (b) (7)(C) explained that the investigation found the employer had deducted employee wages during the period of investigation. The deductions were deemed to be in compliance within the provisions of the CCPA.

WHI (b) (6), (b) (7)(C) also reviewed the EPPA. (b) (6), (b) (7)(C) explained coverage and the prohibitions on performing polygraph examinations as part of pre-employment screening. WHI (b) (6), (b) (7)(C) explained that the investigation found the employer hadn't performed any polygraph examinations on any employee during the period of investigation.

Future Compliance :

Mr. Olvera asserted that he was aware of only one instance in which (b) (6), (b) (7)(C) was denied access to the Nursing Mother's room. He did acknowledge that the office space provided to (b) (6), (b) (7)(C) wasn't in compliance with the space requirements of the Break Time for Nursing Mothers. Mr. Olvera expressed that (b) (6), (b) (7)(C) (b) (7)(E) regarding privacy in the office space appeared to contradict (b) (6), (b) (7)(C) actions since (b) (6), (b) (7)(C) openly expressed milk on the call center floor. Mr. Olvera asserted that he understood that the employer was required to ensure the space afforded to any employee was private and free from intrusion from co-workers and the general public. He acknowledged that it wasn't the employee's responsibility to ensure that the room was compliant and that (b) (6), (b) (7)(C) shouldn't have been instructed to cover the window in the door. Mr. Olvera assured WHI (b) (6), (b) (7)(C) that on site staff would be counseled regarding the provisions of the Break Time for Nursing Mothers.

(b) (7)(E) WHI (b) (6), (b) (7)(C) concluded the final conference.

(b) (6), (b) (7)(C) Notification:

(b) (6), (b) (7)(C) was advised of the investigative findings on August 3, 2018.

Publications:

WHI (b) (6), (b) (7)(C) provided the following publications to the employer during this investigative period:

FLSA	HRG (during IC), Fact Sheet: 16, 17 A, 19, 21, 22, 23, 30, 36, 44, 73
CL	Fact Sheet: 43 (during IC)
FMLA	Fact Sheet: 28D (during IC)

Recommendation: WHI (b) (6), (b) (7)(C) recommends that this case be administratively closed.

Employer Contact:

Direct any correspondence to:

Mr. Michael Olvera

1702 N. Collins Blvd., Suite 260

Richardson, TX 75080

214.841-6037

(b) (6), (b) (7)(C)

Wage Hour Investigator

8/06/18

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1857530 Originating District: Jacksonville FL District Office
Local Filing Number: 2018-214-16057 Investigating District: Jacksonville FL District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 06/26/2018
Assignment Date: 06/26/2018

Employer Information

Trade Name: Houghton Mifflin Harcourt Publishing Legal Name: Houghton Mifflin Harcourt Publishing
Address: 9400 Southpark Center Loop EIN: 04-1456030
County: Orange
NAICS Code: 51113
Orlando, FL 32819 No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 06/01/2018 BNPI:
To: 06/25/2018 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

FMLA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FMLA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

(12.5 hrs). Ent Coverage. (b) (7)(E) case, (b) (6), (b) (7)(C). Breaks for Nursing Mothers., Sec. 7 violation disclosed. (b) (6) was unable to express (b) (6) milk due to an unsecured room from intrusion; and also no convenient key access to the room. ER/HR rep fixed the situation and ATC. FC with Corporate HR Representative, Sarah Rigby, 29 June. Recommend file be closed Pubs: HRG FLSA, Fact Sheets#:73 & Section 15(a)(3) of FLSA.

WHI Signature: _____ Date: 06/29/2018

Reviewed By: _____ Date: _____

Case ID #: 1857530

**Houghton Mifflin Harcourt Publishing Company
125 High Street
Boston, MA 02110
FEIN: 04-1456030**

**c/o
Sarah Rigby
HRBP - Finance, GSC, and Legal
Human Resources
Houghton Mifflin Harcourt
200 Academic Way
Troy, MO, 63379
(636) 528-1019
Sarah.Rigby@hmhco.com**

FLSA NURSING MOTHERs NARRATIVE REPORT

History

There is no investigative history on this corporation regarding break time for Nursing Mothers under the FLSA on WHISARD.

MODO

The Boston DO is the MODO. (b) (7)(E)

(See Exhibit D-1 to D-1b).

Coverage

Corporate Information:

Houghton Mifflin Harcourt is Boston, Massachusetts-based publisher of educational, fiction and non-fiction, software, and trades books and materials. The company has over (b) (4) employees nationwide; and in the Orlando, Florida branch, over (b) (4) employees.

Section 3 (s)(1)(A) of the FLSA during the entire investigative period because the employer's ADV is in excess of \$500,000 per year and they have two or more employees engaged in commerce.

Exemptions

Exemptions were not explored. (b) (6), (b) (7)(C) was found to be a non-exempt employee; and the Break for Nursing Mothers is therefore applied to (b) (6), (b) (7)(C), as a limited investigation related to that part of the Act.

Status of Compliance

Period of Investigation: 1 June to 25 June 2018

Reason for Investigation: This case was setup as a limited investigation (b) (7)(E) (b) (6), (b) (7)(C), related to the break time for nursing mothers under the FLSA.

(b) (7)(E) Data:

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) (b) (7)(E) for the period between 4 June and 8 June (b) (6), (b) (7)(C) had been unable to express (b) (6), (b) (7)(C) milk in the company's Wellness Room, because the room was unsecured and access-free. (b) (6), (b) (7)(C) (b) (7)(E) the company had replaced the lock; but then replaced it with the old lock, and (b) (6), (b) (7)(C) was told that the new lock had been deemed inappropriate. Also, on one occasion a co-worker had walked into the Wellness Room as (b) (6), (b) (7)(C) was expressing. (b) (6), (b) (7)(C) had reported the situation to the company's Human Resources (HR) Representative in Massachusetts, Ms. Sarah Rigby. (b) (6), (b) (7)(C) continued to report the unsuitable status of the Wellness Room to the HR representative, but eventually felt that the issue was not being addressed with the necessary promptness and attention. As a result, (b) (6), (b) (7)(C) (b) (7)(E) (See E-Exhibit, E-2f). (b) (6), (b) (7)(C) claims were (b) (7)(E) during the investigation.

The WHI worked with the HR representative through a series of follow-up calls from 11 June through 26 June, including status checks with (b) (6), (b) (7)(C). On 25 June, the HR representative had informed the WHI that the issue of a secure lock for the Wellness Room, and key accessibility for (b) (6), (b) (7)(C) had been resolved. The WHI followed up with (b) (6), (b) (7)(C) on 26 June; and confirmed the issues as resolved.

Section 6 – Minimum Wage: Limited investigation. Minimum wage issues were not addressed. However, violations are not apparent or likely.

Section 7 - Overtime: Limited investigation. Overtime issues were not addressed. (b) (6), (b) (7)(C) is an hourly paid (b) (6), (b) (7)(C) customer service representative, who works 37.5 hours per week. Also, (b) (6), (b) (7)(C) is not exempt under Section 7 of the FLSA; and therefore, the provisions related to the breaks for nursing mothers apply to (b) (6), (b) (7)(C). In addition, the employer also has over (b) (4) at the Orlando, Florida branch; and approximately (b) (4) employees nationwide. However, overtime violations are not apparent or likely.

Section 11 – Record Keeping: Limited investigation. Record keeping issues were not addressed.

Section 12- Child Labor: Limited investigation. Child Labor issues were not addressed.

FMLA

The Houghton Mifflin Harcourt Publishing Company has 50 or more employees within a 75-mile radius and is therefore covered under FMLA (See E-Exhibit, E-2 to E-2c, FMLA Handbook excerpts).

Disposition

The HR representative was well aware of the circumstances regarding the then unsuitability of the company's Wellness Room as a place for (b) (6), (b) (7)(C) to express milk for (b) (6), (b) (7)(C) child, by the time (b) (6), (b) (7)(C) (b) (7)(E), and the WHI got involved. The WHI's intervention, however, was instrumental in expediting the change of a suitable lock and the ease of key access to the Wellness Room for (b) (6), (b) (7)(C). During subsequent follow-up calls, the HR representative updated the WHI, until the lock had been replaced; and the key availability issue had been resolved (See E-Exhibits, E-1 to E-1a).

WHI (b) (6), (b) (7)(C) held a telephonic Final Conference (FC) with the HR representative, Ms. Sarah Rigby; and went over the issues resolved, the new safety lock and easy access to the Wellness Room, to allow (b) (6), (b) (7)(C) to express milk free from intrusion. The HR representative also assured the WHI that she understands the law; and is committed to compliance with the FLSA's provisions of the breaks for Nursing Mothers under the FLSA, at the corporate level. The HR representative did not have any additional questions.

In addition, the HR representative was also advised that because the company is a covered enterprise, and since (b) (6), (b) (7)(C) was not an exempt employee under Section 7 of the FLSA, and is therefore covered under the break times for nursing mothers, as specified under that section. The WHI concluded the case file telephonically with the HR representative in explaining enterprise coverage during the entire investigative period, based on the fact that the company's gross revenue exceeded \$500,000 per year; and that they have at least two or more employees engaged in commerce.

Publications Provided:

The HR representative Ms. Sarah Rigby was sent Fact Sheet # 73 on 29 June, 2018.

Recommendations

I recommend this file be closed administratively, with no further action.

Correspondence:

Ms. Sarah Rigby, SHRM-CP
HRBP - Finance, GSC, and Legal
Human Resources
Houghton Mifflin Harcourt
200 Academic Way
Troy, MO, 63379

(b) (6), (b) (7)(C)

WHI
29 June 2018

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1859670 Originating District: Richmond VA District Office
Local Filing Number: 2018-297-00302 Investigating District: Richmond VA District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 07/23/2018
Assignment Date: 07/23/2018

Employer Information

Trade Name: Graduate Charlottesville Hotel

Legal Name: Graduate Hotels

Address: 1309 West Main Street

EIN: 38-9392893

County: Charlottesville

NAICS Code: 721110

Charlottesville, VA22903

No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 11/01/2017 BNPI:
To: 08/01/2018 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Compliance (no violations found) Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

TH=20.5 3(s)(1)(a) 207(r)-Nursing Mother (b) (7)(E) Current ee, a nursing mother, (b) (7)(E) the room (b) (7)(E) was designated was not functional for (b) (7)(E) to express milk. (b) (7)(E). Onsite visit revealed there is a specific hotel room which is the Bridal suite designated for the nursing mthr. NO viols found. ER provided pubs: FS 28D, 44, 73, FS 77 HRG.

WHI Signature: _____ Date: 08/13/2018

Reviewed By: _____ Date: _____

Graduate Hotels
Dba: Graduate Charlottesville
1309 West Main Street
Charlottesville, VA 22903
POC: Annie Lugar, Assistant General Manager
434-295-4333 (Phone)

Case ID #1859670
EIN: 38-9392893

FLSA Nursing Mother Narrative

COVERAGE

The subject firm, Graduate Charlottesville Hotel, is hotel serving located on the campus of University of Virginia. The address for the hotel is 1309 West Main Street, Charlottesville, VA 22903. This hotel group is owned by Ben Werpin of Graduate Hotels and managed by AJ Capital Management in Chicago, Illinois. The firm was incorporated on 7/13/2015 according to the State Corporate Commission (see ex C-2). There are a total of 12 properties owned by Graduate Hotel which are located in Ann Arbor, MI, Athens, GA, Berkley, CA, Iowa City, IA, Lincoln, NE, Madison, WI, Minneapolis, MN, Oxford, MS, Richmond, VA Seattle, WA and Tempe, AZ (see ex C-1).

On August 1, 2018, the initial conference was held with Annie Lugar, Assistant General Manager of this property. Ms. Lugar provided a tour of the establishment to include the designated space for the nursing mother.

The Assistant General Manager stated the firm's ADV has exceeded \$500,000 in the last three years. The hotel employs (b) (4) employees at this location. According to the verbal statement from Ms. Lugar, the business met enterprise coverage.(see ex C-1).

3(d) Employer: Ms. Annie Lugar, Assistant General Manager, is involved in the day to day operations of the subject firm and meets the requirements for a 3(d) employer. She hires, fires and make management decisions.

Period of Investigation: November 1, 2017 to August 1, 2018

MODO: The corporate office is located in Chicago, Illinois. The Chicago DO is the DO managing office. (b) (7)(E) (see ex. D-1).

EXEMPTIONS

Section 213 Exemptions:

541.100 Executive Exemption: This exemption appeared to be applicable to the Assistant General Manager, Annie Lugar and Mr. Robert Allen, Kitchen Manager. They both manage two or more employees and make management decisions. Their salaries were not disclosed during this investigation.

(b) (6), (b) (7)(C) was found to be a nonexempt employee while employed as a Lead Cook for subject employer and is subject to Section 7 of the Act and is entitled to the protection under section 7 (r). (see ex B-1)

STATUS OF COMPLIANCE

History: No history was found on subject firm.

Employer's work week is Sunday through Saturday. The payroll is scheduled for a bi-weekly pay cycle.

(b) (6), (b) (7)(C) is a nursing mother for (b) (6), (b) (7)(C) current employer, Graduate Charlottesville. (b) (6), (b) (7)(E) the room designated for (b) (6), (b) (7)(C) to express milk was not functional and (b) (6), (b) (7)(C) was told to clock out so that (b) (6), (b) (7)(C) could go home and express milk. (b) (6), (b) (7)(C) has a 7 month old baby. On one particular day, (b) (6), (b) (7)(C) stated the room was too hot for (b) (6), (b) (7)(C) to express milk. (b) (6), (b) (7)(C) stated (b) (6), (b) (7)(C) is the only nursing mother at this location. (b) (6), (b) (7)(C) (b) (7)(E)

(b) (6), (b) (7)(C) The designated space was inspected and it was found the Bridal Suite was designated as the room for (b) (6), (b) (7)(C) to use for expressing milk (see ex D-3 through D-3-h for pictures of room). According to the Assistant General Manager, she stated the occurrence (b) (6), (b) (7)(C) is referring to was a one found occurrence and the hotel offered (b) (6), (b) (7)(C) to go to another hotel room but they needed to make sure it was clean on that day. (b) (6), (b) (7)(C) became upset and left the hotel, but (b) (6), (b) (7)(C) returned. (b) (6), (b) (7)(C) did admit to being upset because it was taking too long for the room to become available. (b) (6), (b) (7)(C) stated (b) (6), (b) (7)(C) decided to go home and express the milk on this particular day. (b) (6), (b) (7)(C) was not told to clock out and go home. The room was found clean and the air conditioning was working properly on the day of the visit.

(b) (6), (b) (7)(C) was notified on August 7, 2018 of the results of the investigation. (b) (6), (b) (7)(C) stated (b) (6), (b) (7)(C) just wanted the employer to understand the law.

Section 206

No basis for a determination was found during this investigation.

Section 207

No basis for a determination was found during this investigation.

Section 207 (r) Nursing Mother:

No violations found during this investigation.

Section 211:

No basis for a determination was found during this investigation.

Section 212:

There were no violations found for child labor during this investigation.

DISPOSITION

A final conference was held with Annie Lugar, Assistant General Manager and Robert Allen, Kitchen Manager and Sous Chef and WHI (b) (6), (b) (7)(C) at the establishment on August 1, 2018. Specific topics discussed included coverage, exemptions, minimum wage hours worked, overtime, recordkeeping, and child labor provisions of the Act.

Coverage and exemptions were discussed with the employer. It was stated to the employer that we needed to establish coverage as a requirement of the FLSA. In addition, it was required to determine if we are able to enforce the provision of the Act for nursing mothers. Ms. Lugar was provided the Nursing Mother Break Time Fact Sheet 73. Ms. Lugar verified with Human Resources, the annual gross sales were over \$500,000 the past two years. The hotel was found to have enterprise coverage for the period of investigation. This location is one of 12 properties for this employer. Exemptions were discussed in order to determine if (b) (6), (b) (7)(C) was a 213 exempt employee. (b) (6), (b) (7)(C) is a line cook and paid an hourly wage. If (b) (6), (b) (7)(C) works overtime, (b) (6), (b) (7)(C) is paid overtime.

Ms. Lugar stated that they wanted to cooperate in any way possible with (b) (6), (b) (7)(C) and she did not

realize the matter had escalated. The employer stated they provide the key to (b) (6), (b) (7)(C) each week for the room so that (b) (6), (b) (7)(C) has access to it. Ms. Lugar stated that if (b) (6), (b) (7)(C) needed to use another room at any time, they do have an office space in Human Resources where (b) (6), (b) (7)(C) can go to express milk and it also has a lock on it. She also stated they do not have signage to alert there is a nursing mother in the room because all of the hotel rooms have double locks and didn't think they needed to provide a sign. But, if (b) (6), (b) (7)(C) requested a sign, they would be willing to provide it to (b) (6), (b) (7)(C).

Overtime requirements and record keeping requirements were discussed briefly.

Child labor requirements were discussed briefly as there was no one under the age of 18 working for the subject employer.

Publications provided and discussed: HRG, FS 28D, 44, 73, 77

FMLA: Employer met the criteria for a covered employer and was provided the FMLA fact sheet.

Recommendations It is recommended that the case be administratively closed (b) (7)(E)

(b) (6), (b) (7)(C), WHI
August 8, 2018

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1862207 Originating District: Wilkes Barre PA District Office
Local Filing Number: 2018-349-00592 Investigating District: Wilkes Barre PA District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 08/22/2018
Assignment Date: 08/22/2018

Employer Information

Trade Name: Pleasant Valley Manor

Legal Name: Pleasant Valley Manor, Inc.

Address: 4227 Manor Drive

EIN: 23-7405552

County: Monroe

NAICS Code: 62311

Stroudsburg, PA18360

No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 05/25/2018
To: 09/11/2018
Investigation Type: (b) (7)(E)
Investigation Tool: Limited Investigation
Compliance Status: Agree to Comply

BNPI:
Reinvestigation: ☒
Recurring Violation: ☐
Future Compliance Agreed: ☒
Involved in AG: ☐

Recommended Action:

BWFS:	<input checked="" type="checkbox"/>	RO/NO Review:	<input type="checkbox"/>
CMP:	<input type="checkbox"/>	Follow Up Investigation:	<input type="checkbox"/>
Litigation:	<input type="checkbox"/>	Other Action:	<input type="checkbox"/>
Civil Action:	<input type="checkbox"/>	Denial of Future Certificate:	<input type="checkbox"/>
Criminal Action:	<input type="checkbox"/>	BW Payment Deadline:	10/11/2018
Submit For Opinion:	<input type="checkbox"/>	Trailer forms attached:	<input type="checkbox"/>

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	1	1	\$31.77	\$31.77	\$0.00	\$0.00	

Total Violations Under FLSNM:	2						\$0.00
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WHISARD Compliance Action Report

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	1	Unduplicated Employees Agreed:	1
Total Amount BWs Computed:	\$31.77	Total Amount BWs Agreed:	\$31.77
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

FLSANM (14.25 hrs)- (b) (7) (b) (6), (b) (7)(E) was disciplined for taking breaks protected under Sec 7(r). (b) (7)(E) EE gave birth (b) (6), (b) (7)(C) was written up for 'extending' break 6/19, and sent home for extending 15 minute break to 25 for purpose of expressing milk. 7(r) violation for prohibiting reasonable break time. 15(a)(3) retaliation asserted for write up and sending home, DOE in agmt. BWs due = \$31.77. FC held 9/11/18 w/ S. Roberts, ATFC, ATP BWs due.

WHI Signature: _____ Date: 09/12/2018

Reviewed By: _____ Date: _____

**Pleasant Valley Manor, Inc.
Dba Pleasant Valley Manor
4227 Manor Dr.
Stroudsburg, PA 18360**

**Phone: (570) 992-4172
EIN #: 23-7405552
Case ID: 1862207**

FLSA NARRATIVE

COVERAGE:

The establishment operates as a residential long-term care and rehabilitation facility for the elderly and infirm. It is a single-location establishment. Products shipped in interstate commerce are handled by all employees of the establishment, including medications, supplies, and foods. There are, on average, (b) (4) individuals employed by the firm. Pleasant Valley Manor began as a home for the disadvantaged in 1924 before becoming a nursing and rehabilitation facility. It was incorporated in the state of Pennsylvania on 10/07/1974. It is a 501(c)(3) non-profit corporation operated by a board of managing directors. The County of Monroe does not have any ownership over Pleasant Valley Manor or its assets, though the managing board of Pleasant Valley Manor is comprised of the three sitting Monroe County Commissioners. Monroe County Commissioners have the authority to make appointments for two additional civilian board member positions. Revenues are generated through resident payments via Medical Assistance, Medicare, long-term care insurance, and private pay. The annual dollar volume for each of the years 2016, 2017 and 2018 (year to date) exceeds (b) (4) (See Ex. C-1 through C-4).

Coverage under the section 3(s)(1)(b), as a named enterprise, is extended to all employees of the establishment. This limited investigation concerns compliance with FLSA Section 207(r) for the period of 5/25/2018 – 9/11/2018.

Section 3(d) Employer: During the investigation, the WHI dealt primarily with Human Resources Director, Susan Roberts. Ms. Roberts is a 3(d) employer as defined by the FLSA. She develops, implements and enforces company policies. She makes independent decisions regarding the hiring, firing

and changing in status of personnel. She oversees the human resources and payroll functions for all employees and is responsible for ensuring compliance with state and federal workplace regulations (See Ex. C-1 and D-13).

MODO: The establishment is comprised of one single location within the jurisdiction of the Wilkes-Barre District Office.

EXEMPTIONS:

No exemptions were explored in this limited investigation. (b) (6), (b) (7)(C) is a non-exempt employee compensated on an hourly basis. As such, (b) (6), (b) (7)(C) is entitled to protection under 7(r) (See Ex. A-1, B-1 and E-1).

STATUS OF COMPLIANCE:

Reason for Investigation: This limited investigation was initiated upon (b) (7)(E) (b) (6), (b) (7)(C) (b) (7)(E) (b) (6), (b) (7)(C) (b) (7)(E) was being disciplined for taking breaks to express milk. (b) (6), (b) (7)(C) (b) (7)(E) had been written up in June 2018 for extending one break from 15 to 25 minutes to express milk, and had been sent home by (b) (6), (b) (7)(C) supervisor for taking a break for the same purpose on August 21, 2018. (b) (7)(E) (b) (6), (b) (7)(C) provided WHD (b) (7)(E) to conduct this investigation (See Ex. B-1 and D-1).

(b) (7)(E) the firm did not provide sufficient space to express milk. (b) (7)(E)

Prior History: There have been two prior WHD interventions with the firm (See Ex. D-18 and D-19):

#1771348, FMLA Limited Investigation. Concluded 10/2/2015: (b) (7)(E) (b) (6), (b) (7)(C) (b) (7)(E) (b) (6), (b) (7)(C) was being discriminated against for taking FMLA leave. FMLA FC w/Susan Roberts, Director of Human Resources. FMLA RK violations found. FMLA policy rev'd and it was recommended to ER that they develop a more comprehensive FMLA policy that incorporates the military leave entitlements. ER ATC. No CL violations found. Pubs: FS#44, HRG, WH-1088, WH-1261, WH-1262, WH-1281, WH-1282, WH-1330, WH-1418, WH- 1420, and WH-1421 were given to the firm.

#1644746, FLSA (b) (7)(E) Concluded 2/6/2012: *FLSA 3(s)(1)(a) EE did not receive two hours of OT worked. EE's RR is (b) (6). Total due for two hours of OT \$42.96. Spoke to Larry Erickson regarding (b) (6), (b) (7)(C) and missing paycheck. ER stated he pays OT in next pp but will cut EE a check today. Updated (b) (6), (b) (7)(C) on status. On 2/3/2012 (b) (6), (b) (7)(C) picked up check at ER's business and received total money owed. Mailed ER OT FS and HRG.*

Findings Section 6:

A review of payroll records and employee interviews revealed no violations. The investigation was limited to compliance with Section 7(r) of the FLSA, though recent payroll records provided show the lowest paid employee earns in excess of \$12.00 per hour (See Ex. A-1 and E-1).

Findings Section 7:

A review of payroll records and employee interviews revealed (b) (6), (b) (7)(C) was paid T1/2 (b) (6), (b) (7)(C) hourly rate for all hours worked over 40 in a workweek (See Ex. A-1 and B-1).

Violations under Section 7(r) were disclosed. (b) (6), (b) (7)(C) gave birth to a child (b) (6), (b) (7)(C) maternity leave was designated under FMLA (b) (6), (b) (7)(C). Prior to the commencement of (b) (6), (b) (7)(C) FMLA, (b) (6), (b) (7)(C) verbally communicated (b) (6), (b) (7)(C) need to take breaks to express breast milk upon (b) (6), (b) (7)(C) return to work with (b) (6), (b) (7)(C) Unit Supervisor, the facility Director of Nursing, and Human Resources (See Ex. B-1 and D-4).

(b) (6), (b) (7)(C) was provided information regarding EEOC Title VII.

Insufficient break time 7(r)(1)(A):

As per their CBA, nursing staff receives a total of three paid breaks per 8-hour shift. Breaks are paid, as they may be interrupted in the event of a resident emergency. (b) (6), (b) (7)(C) takes two breaks lasting 15 minutes each during (b) (6), (b) (7)(C) shift. (b) (6), (b) (7)(C) also receives a meal break scheduled for 30 minutes, though (b) (6), (b) (7)(C) is not always able to take the full duration. (b) (6), (b) (7)(C) typically used (b) (6), (b) (7)(C) 30 minute meal break and/or (b) (6), (b) (7)(C) final 15 minute break to express milk. (b) (6), (b) (7)(C) never extended (b) (6), (b) (7)(C) scheduled 30 minute break. On occasion, (b) (6), (b) (7)(C) extended (b) (6), (b) (7)(C) 15 minute break to no more than 25 minutes. (b) (6), (b) (7)(C) indicated that upon (b) (6), (b) (7)(C) return to work, (b) (6), (b) (7)(C) breaks for expressing milk were interrupted several times by a supervisor requesting (b) (6), (b) (7)(C) presence on the unit (See Ex. B-1) On June 18, 2018, (b) (6), (b) (7)(C) received a written warning for

extending (b) (6), (b) (7)(C) 15 minute break to 25 minutes. The warning was entered into (b) (6), (b) (7)(C) personnel file (See Ex. D-3). (b) (6), (b) (7)(C) was not being permitted to take the reasonable break time needed under Section 7(r).

Resolution: On August 23, 2018, WHI met with Ms. Roberts and reviewed the written warning in (b) (6), (b) (7)(C) file. Ms. Roberts explained that she was unaware, at the time, (b) (6), (b) (7)(C) extended (b) (6), (b) (7)(C) scheduled break in order to express milk. Ms. Roberts agreed to discuss the matter with all Unit Supervisors to ensure they understand that nursing mothers are afforded reasonable break time to express milk. She stated she would see to it that (b) (6), (b) (7)(C), and any other employee needing breaks to express milk, would be afforded reasonable time to do so.

Insufficient Space 7(r)(1)(B):

(b) (6), (b) (7)(C) (b) (7)(E) (b) (6), (b) (7)(C) was instructed to express milk in a break room, which was accessible by all employees on (b) (6), (b) (7)(C) shift and was not shielded from view. During the course of the investigation, it was revealed that (b) (6), (b) (7)(C) was offered several areas which were shielded from view and free from intrusion to express milk. (b) (6), (b) (7)(C) later clarified that the break room was closest to (b) (6), (b) (7)(C) work area and (b) (6), (b) (7)(C) chose to use that space to express milk. During a tour of the establishment on 8/23/18, Ms. Roberts showed WHI two rooms that were offered to (b) (6), (b) (7)(C). Both were private and had locking doors, meeting the requirements under Section 7(r). (b) (6), (b) (7)(C) indicated (b) (6), (b) (7)(C) had not used those rooms since being written up in June, because they were in another wing of the building and would result in extending (b) (6), (b) (7)(C) break time further. No violation is being assessed for providing insufficient space (See Ex. D-9 through D-11).

Resolution: Ms. Roberts arranged for (b) (6), (b) (7)(C) to have access to an office on (b) (6), (b) (7)(C) unit, which is shielded from view and free from intrusion. A follow-up call to (b) (6), (b) (7)(C) confirmed (b) (6), (b) (7)(C) was able to use this space without issue, in order to express milk.

Retaliation 15(a)(3):

(b) (6), (b) (7)(C) returned to work (b) (6), (b) (7)(C) took breaks to express milk without incident until June 18, 2018. On June 18, 2018, (b) (6), (b) (7)(C) received a written warning from (b) (6), (b) (7)(C) supervisor for extending a 15 minute break to 25 minutes. (b) (6), (b) (7)(C) (b) (7)(E) (b) (6), (b) (7)(C) informed (b) (6), (b) (7)(C) supervisor of the purpose of the break before (b) (6), (b) (7)(C) took it and at the time of being disciplined. (b) (6), (b) (7)(C) also (b) (7)(E) (b) (6), (b) (7)(C) contacted (b) (6), (b) (7)(C) Union to try to resolve the disciplinary action. (b) (6), (b) (7)(C) stated (b) (6), (b) (7)(C) Union spoke to

Human Resources about it, but was unable to have the warning revoked. The warning was entered into (b) (6), (b) (7)(C) personnel file (See Ex. D-3). (b) (6), (b) (7)(C) had no other disciplinary actions taken against (b) (6), (b) (7)(C) for the duration of (b) (6), (b) (7)(C) employment. The written warning placed (b) (6), (b) (7)(C) on a progressive discipline plan which entails three written warnings and termination of employment for any further violations.

On August 21, 2018, (b) (6), (b) (7)(C) (b) (7)(E) (b) (6), (b) (7)(C) informed co-workers and superiors (b) (6), (b) (7)(C) was leaving the unit to take (b) (6), (b) (7)(C) final 15 minute break. The break lasted approximately 20 – 25 minutes. As (b) (6), (b) (7)(C) was ending (b) (6), (b) (7)(C) break, a supervisor came into the room and directed (b) (6), (b) (7)(C) back to (b) (6), (b) (7)(C) unit. (b) (6), (b) (7)(C) returned to work and was approached by the supervisor a few moments later. The supervisor verbally reprimanded (b) (6), (b) (7)(C) for extending (b) (6), (b) (7)(C) break and informed (b) (6), (b) (7)(C) was being sent home early. Time records show (b) (6), (b) (7)(C) clocked out and left the establishment 2.25 hours prior to the scheduled end of (b) (6), (b) (7)(C) shift. (b) (6), (b) (7)(C) was not issued anything in writing from the supervisor. This incident prompted (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) (b) (7)(E) (See Ex. B-1 and D-2).

Resolution:

Ms. Roberts was aware of the June 2018 written warning, as it was placed into (b) (6), (b) (7)(C) personnel file. However, at the time of the initial conference on August 23, 2018, Ms. Roberts was unaware that (b) (6), (b) (7)(C) had been disciplined again for extending a break to express milk. Ms. Roberts agreed to remove the June 2018 written warning from (b) (6), (b) (7)(C) file. She also agreed to provide the supervisor a copy of Fact Sheet #73 and ensure (b) (6), (b) (7)(C) was afforded reasonable break time going forward. Further, she ensured that no disciplinary record would be entered into (b) (6), (b) (7)(C) file for the August 21, 2018 early dismissal.

(b) (7)(E)

(See Ex. A-2 and D-17).

Back wages were computed for the 2.25 hours (b) (6), (b) (7)(C) was dismissed on August 21, 2018:

$$(b) (7)(E) = \$31.77$$

Total back wages due = \$31.77

Findings Section 11: The limited investigation revealed no Section 11 violations (See Ex. A-1).

Findings Section 12: The limited investigation revealed no Section 12 violations (See Ex. A-1, C-1, and E-1).

DISPOSITION

The final conference was held, via telephone, on September 11, 2018. Ms. Susan Roberts, Human Resources Director, represented the firm. WHI (b) (6), (b) (7)(C) represented WHD. WHI began by explaining coverage under the FLSA and how it is applicable to all employees of the firm. WHI informed Roberts the subject investigation was limited to compliance with Section 7(r) and covered the period of 5/25/2018 – 9/11/2018. Ms. Roberts was informed the investigation disclosed violations.

WHI explained that, under Section 7(r), employers are required to provide reasonable break time for an employee to express breast milk for (b) (6), (b) (7)(C) nursing child for 1 year after the child's birth each time such employee has need to express the milk. WHI explained that (b) (6), (b) (7)(C) has been disciplined twice for taking reasonable break times to express milk and had (b) (6), (b) (7)(C) breaks interrupted on several occasions. Ms. Roberts expressed her regret over the situation and agreed to future compliance, stating (b) (6), (b) (7)(C) will not be disciplined in the future for taking reasonable break time for the purpose of expressing milk. Ms. Roberts agreed to remove the June 2018 written warning from (b) (6), (b) (7)(C) personnel record.

WHI discussed with Ms. Roberts that the investigation showed (b) (6), (b) (7)(C) was again retaliated against for taking protected break time to express milk on August 21, 2018. WHI reviewed the June written warning as well as the August incident in which (b) (6), (b) (7)(C) was dismissed early from (b) (6), (b) (7)(C) shift. The early dismissal resulted in lost wages. WHI informed Roberts that back wages are due (b) (6), (b) (7)(C).

(b) (6), (b) (7)(C) as a result of (b) (6), (b) (7)(C) early dismissal. WHI explained the back wage computation and informed Roberts of the total amount due. Ms. Roberts agreed to pay (b) (6), (b) (7)(C) back wages in the amount of \$31.77 due to wages lost for being dismissed early from work on August 21, 2018.

Ms. Roberts stated she began finalizing the firm's written policy for break time for nursing mothers, using Fact Sheet #73 as a guide. She also met with unit supervisors to ensure they understand the break time and sufficient space requirements under Section 7(r).

WHI advised Ms. Roberts of the possibility of future investigations, which may carry the assessment of back wages, liquidated damages, and civil money penalties if violations are disclosed. The WH-56 Summary of Unpaid Wages, WH-58 Back Wage Instructions, and WH-58 Back Wage Receipt form were e-mailed to Ms. Roberts at the conclusion of the phone conference. On September 12, 2018, she returned the signed WH-56 in agreement to pay the back wages due by October 11, 2018.

FMLA: The employer has over 50 employees and is covered under the FMLA. The subject investigation was limited to the FLSANM under Section 7(r). A FMLA Policy Review was conducted during the prior investigation (See Ex. D-19). (b) (6), (b) (7)(C) in the subject investigation reports no issues in the taking of FMLA for maternity leave.

(b) (6), (b) (7)(C) notification: (b) (6), (b) (7)(C) was notified of the outcome of the investigation, via telephone, on September 11, 2018. (b) (6), (b) (7)(C) expressed (b) (6), (b) (7)(C) satisfaction with the resolution.

Publications provided: FS #28, 44, 73, 77A, WH-1518 and Break Time for Nursing Mothers Power Point.

Recommendation: (b) (7)(E)
(b) (6), (b) (7)(C) All correspondence should be addressed to Ms. Susan Roberts, Director of Human Resources.

(b) (6), (b) (7)(C), WHI

9/12/2018

<p align="center">WHISARD Compliance Action Report</p>	
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U.S. Department of Labor
Wage and Hour Division

Case ID:	1862284	Originating District:	Wilkes Barre PA District Office
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Case ID:	1862284	Originating District:	Wilkes Barre PA District Office
Local Filing Number:	2018-349-00593	Investigating. District:	Wilkes Barre PA District Office
WHMIS Case Number:		Lead Investigator:	(b) (6), (b) (7)(C)
Registration Date:	08/23/2018		
Assignment Date:	08/23/2018		

<u>Employer Information</u>	
Trade Name:BAR-RAY PRODUCTS	Legal Name: Bar-ray Corporation
Address: 90 E Lakeview Dr.	EIN: 11-0508873
	County: Adams
	NAICS Code: 33911
Littlestown, PA17340	No. Of Employees: (b) (4)

<u>Employer Information</u>	
Trade Name:BAR-RAY PRODUCTS	Legal Name: Bar-ray Corporation
Address: 90 E Lakeview Dr.	EIN: 11-0508873
	County: Adams
	NAICS Code: 33911
Littlestown, PA17340	No. Of Employees: (b) (4)

Investigation Information			
Period Investigated From:	08/24/2016	BNPI:	
To:	08/23/2018	Reinvestigation:	<input type="checkbox"/>
Investigation Type:	(b) (7)(E)	Recurring Violation:	<input type="checkbox"/>
Investigation Tool:	Full Investigation	Future Compliance Agreed:	<input checked="" type="checkbox"/>
Compliance Status:	Agree to Comply	Involved in AG:	<input type="checkbox"/>

Investigation Information			
Period Investigated From:	08/24/2016	BNPI:	
To:	08/23/2018	Reinvestigation:	<input type="checkbox"/>
Investigation Type:	(b) (7)(E)	Recurring Violation:	<input type="checkbox"/>
Investigation Tool:	Full Investigation	Future Compliance Agreed:	<input checked="" type="checkbox"/>
Compliance Status:	Agree to Comply	Involved in AG:	<input type="checkbox"/>

<u>Recommended Action:</u>			
BWFS:	<input type="checkbox"/>	RO/NO Review:	<input type="checkbox"/>
CMP:	<input type="checkbox"/>	Follow Up Investigation:	<input type="checkbox"/>
Litigation:	<input type="checkbox"/>	Other Action:	<input type="checkbox"/>
Civil Action:	<input type="checkbox"/>	Denial of Future Certificate:	<input type="checkbox"/>
Criminal Action:	<input type="checkbox"/>	BW Payment Deadline:	
Submit For Opinion:	<input type="checkbox"/>	Trailer forms attached:	<input type="checkbox"/>

<u>Recommended Action:</u>			
BWFS:	<input type="checkbox"/>	RO/NO Review:	<input type="checkbox"/>
CMP:	<input type="checkbox"/>	Follow Up Investigation:	<input type="checkbox"/>
Litigation:	<input type="checkbox"/>	Other Action:	<input type="checkbox"/>
Civil Action:	<input type="checkbox"/>	Denial of Future Certificate:	<input type="checkbox"/>
Criminal Action:	<input type="checkbox"/>	BW Payment Deadline:	
Submit For Opinion:	<input type="checkbox"/>	Trailer forms attached:	<input type="checkbox"/>

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

[illegible]

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

Total Violations Under FLSA:	1		\$0.00
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WHISARD Compliance Action Report

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	
Total Violations Under FLSNM:	2						\$0.00

FMLA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FMLA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

FLSNM- initiated (b) (7)(E) not given reasonable breake time nor adequate space. (b) (7)(E)
 FLSA RK viol. Firm came into compliance. FC held 8/30/18 w/ D. Myers, HR Dir. Pubs, FS #44, 73,
 HRG, ATFC/ATP. Rec. Admin. closing

WHI Signature: _____ Date: 08/30/2018

Reviewed By: _____ Date: _____

Ray-Bar Products, Inc
90 East Lakeside Dr.
Littlestown, PA 17340.
Phone: 717-359-9100
EIN #: 11-0508873

FLSA NARRATIVE

COVERAGE:

Ray-Bar Products, Inc designs and manufactures personal radiation protection products. The company has been in operation since 1993. Products are produced and shipped in interstate commerce and handled by all employees of the store. The corporate headquarters is located at 90 East Lakeside Dr., Littlestown, PA 17340. The firm employs (b) (4) employees at both the subject establishment and at a lead plant at 90 Monarch St., Littlestown, PA 17340. (See Exhibits C-1) Publicly circulated documents and an annual sales report from firm establish the annual revenue for Ray-Bar Products exceeds (b) (4) for the years 2016 and 2017 (See Ex. C-2 and C-3).

As such, enterprise coverage under the section 3(s)(1)(a) of the FLSA is established for all employees of the establishment. This limited investigation covers the period 8/24/2016 to 08/23/2018.

Section 3(d) Employer: During the investigation, the WHI dealt primarily with Human Resources Director, Denise Myers. Ms. Myers is a 3(d) employer as defined by the FLSA. She develops, implements and enforces corporate policies. She makes independent decisions regarding the hiring, firing personnel. She oversees the human resources and payroll functions for all employees and is responsible for ensuring compliance with state and federal workplace regulations (See Exhibit C-1).

No MODO record required as the firm is not part of a multiunit enterprise.

Prior History: The Wilkes-Barre DO has no prior history with this employer.

EXEMPTIONS:

No exemptions were explored in this limited investigation. (b) (6), (b) (7)(C) is a non-exempt employee compensated on an hourly basis. As such, (b) (6), (b) (7)(C) is entitled to protection under 7(r) (See Exhibits A-1, A-2 and B-1).

STATUS OF COMPLIANCE:

Reason for Investigation: This limited investigation was initiated (b) (7)(E) (b) (6), (b) (7)(C) (b) (7)(E) (b) (6), (b) (7)(C) employer prohibited (b) (6), (b) (7)(C) from taking breaks when needed for the purpose of expressing milk. (b) (6), (b) (7)(C) also (b) (7)(E) (b) (6), (b) (7)(C) was being required to express milk in an bathroom. (See Ex. B-1).

(b) (7)(E) (b) (6), (b) (7)(C) provided WHD (b) (7)(E) to conduct this investigation (See Ex. D-1a).

Findings

Section 6: A review of payroll records and employee interviews revealed no violations (See Exhibits A-1, A-2 and B-1).

Section 7: A review of payroll records and employee interviews revealed no violations. (See Exhibits A-1, A-2 and B-1).

Section 11: The limited investigation revealed firm failed to maintain record of meal breaks. (See Exhibits A-1, A-2 and C-1).

Section 12: The limited investigation revealed no Section 12 violations (See Exhibits A-1, A-2 and C-1).

Violations under Section 7(r) were disclosed. (b) (6), (b) (7)(C) gave birth to a child (b) (6), (b) (7)(C) maternity leave was designated under FMLA from approximately (b) (6), (b) (7)(C) verbally communicated (b) (6), (b) (7)(C) need to take breaks to express breast milk upon (b) (6), (b) (7)(C) return to work.

Insufficient break time 7(r)(1)(A):

From the time (b) (6), (b) (7)(C) returned to work (b) (6), (b) (7)(C) was able to take a break to express milk as needed. On or about mid-August until WHD's intervention, (b) (6), (b) (7)(C) was asked/required by Ms. Myers to take the last break of the day before 2:30 pm. (b) (6), (b) (7)(C) shift is over at 4pm and (b) (6), (b) (7)(C) was needed at (b) (6), (b) (7)(C) desk in order to meet business needs. After trying to adjust (b) (6), (b) (7)(C) breaks, (b) (6), (b) (7)(C) informed Ms. Myers that it was negatively impacting (b) (6), (b) (7)(C) milk production. (See Exhibits B-1 and D-1).

Resolution: On 8/23/2018, CORPS (b) (6), (b) (7)(C) informed Ms. Denise Myers, Human Resources Director, of the employer's requirement to be compliant with Section 7(r). CORPS (b) (6), (b) (7)(C) later placed a follow-up call to (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) confirmed (b) (6), (b) (7)(C) was being permitted to take a break as frequently as needed.

Insufficient Space 7(r)(1)(B):

From the time (b) (6), (b) (7)(C) returned to work, (b) (6), (b) (7)(C) was not always provided a space in which to express milk that was shielded from view and free from intrusion by co-workers and the public. (b) (6), (b) (7)(C) was required to express milk in a bathroom, which is an open area accessible to both employees and guests. At times (b) (6), (b) (7)(C) used the buildings sole conference which was sufficient space, but was used regularly for meetings. Efforts were made for (b) (6), (b) (7)(C) to use the owner's office, when he was out-of-town. (See Exhibit B-1, C-1, and D-1).

CORPS (b) (6), (b) (7)(C) inspected the bathroom space and found it did not meet the requirements under section 7(r).

Resolution: CORPS (b) (6), (b) (7)(C) informed Ms. Myers of the employer's requirement to provide (b) (6), (b) (7)(C) a space that is shielded from view and free from intrusion in which to express milk. Discussions with Ms. Myers revealed that the employer would be able to hang curtains in a office used for storage and allow the (b) (6), (b) (7)(C) to use the office to express milk. The office is equipped with a locking door, is shielded from view and free from intrusion. A follow-up call to (b) (6), (b) (7)(C) confirmed (b) (6), (b) (7)(C) was now being permitted to use the office to express milk (See Exhibit B-1.)

FMLA

The employer has over 50 employees and is covered under the FMLA. There are a total of (b) (6), (b) (7)(C) employees in Littlestown. Eligibility based on 50 employees within 75 miles of the establishment is evidenced by the fact (b) (6), (b) (7)(C) was found eligible for FMLA for giving birth (b) (6), (b) (7)(C).

The required FMLA poster is visible in a common area accessible to all employees. FMLA requests are handled by Human Resources and the employer uses WHD-generated FMLA form (ex: WH-380, WH-381) to meet notification requirements. The firm has a written FMLA policy, which is provided to employees upon hire as part of the employee handbook. No deficiencies were found in the policy. (See Exhibit D-2)

DISPOSITION

On August 30, 2018, the final conference was held at the establishment. Denise Myers, Director of Human Resources, represented Bar-Ray. CORPS (b) (6), (b) (7)(C) represented the Wage and Hour Division. WHI began the conference by explaining how the provisions under Section 7(r) and how they are applicable in this investigation. Ms. Myers confirmed her understanding of their responsibility.

Each violation and the resolution taken to come into compliance was reviewed. Ms. Myers confirmed that the firm is committed to future compliance. Ms. Myers stated that the violations were a result of her failure to fully research

the employer's responsibilities. Ms. Myers asked a few questions about scheduling and obtaining information to determine whether an employee would have a need for breaks to express milk. CORPS answered Ms. Myers' questions and she confirmed her understanding of the break time and space requirements.

The firm's failure to track meal breaks was reviewed as a violation of the FLSA.

Ms. Myers agreed to comply with the FLSANM in the future by providing sufficient space and breaks as needed to express milk. She also agreed to comply with FLSA record keeping requirements by requiring employees to clock in and out for meal breaks.

Ms. Myers then invited (b) (6), (b) (7)(C) to join us to determine if the proposed room was satisfactory. (b) (6), (b) (7)(C) said that (b) (6), (b) (7)(C) had the same idea about how to resolve this and that the room would work well with added curtains.

(b) (6), (b) (7)(C) notification: (b) (6), (b) (7)(C) was notified of the outcome of the investigation at the final conference on August 30, 2018. (b) (6), (b) (7)(C) expressed (b) (6), (b) (7)(C) satisfaction with the resolution.

Publications provided: FS #28, 44, 73, 77A, WH-1518.

Recommendation: The file is be closed administratively (b) (7)(E).

(b) (6), (b) (7)(C)

8/30/2018

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1863203 Originating District: Pittsburgh PA District Office
Local Filing Number: 2018-282-00680 Investigating District: Pittsburgh PA District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 09/05/2018
Assignment Date: 09/06/2018

Employer Information

Trade Name: NiSource Legal Name: NiSource
Address: 100 Laural View Drive EIN: EIN Missing
County: Fayette
NAICS Code: 56142
Smithfield, PA15478 No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 09/06/2018 BNPI: 0
To: 09/19/2018 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Full Investigation Future Compliance Agreed: ☒
Compliance Status: Not Applicable Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

5 Hrs. Nursing mother (b) (7)(E) case concluded due to non responsive (b) (6), (b) (7)(C) (see memo). Firm never contacted/no pubs.

WHI Signature: _____ Date: 09/20/2018

Reviewed By: _____ Date: _____



Memorandum

To: ADD Heeter

From: WHI (b) (6), (b) (7)(C)

Date: 9/11/2018

Re: NiSource

This memo is in reference to NiSource (Case ID #1863203) which was initiated (b) (7)(E) a nursing mother for the failure to provide a reasonable break time. (b) (6), (b) (7)(C) in the case (b) (7)(E) [REDACTED]. The case was assigned on 9/06/2018 and (b) (6), (b) (7)(C) was called for a statement and additional information on 9/7/2018 and 9/10/2018 and messages were left each time to return the call. A WH-41 letter requesting contact was sent on 9/11/2018 and as of 9/19/2018 (b) (6), (b) (7)(C) had not contacted this Investigator so the determination was made to suspend the investigation with no further action taken due to the non-responsive (b) (6), (b) (7)(C).

WHI (b) (6), (b) (7)(C)

WHISARD Compliance Action Report

U.S. Department of Labor Wage and Hour Division

Case ID: 1632623 Originating District: Richmond VA District Office
Local Filing Number: 2012-297-00003 Investigating District: Richmond VA District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 10/04/2011
Assignment Date: 11/30/2011

Employer Information

Trade Name: Carefree Home Health & Companions, Inc. Legal Name: Carefree Home Health & Companions, Inc.
Address: 460 Hidden Creek Lane EIN: 56-2297051
County: Harrisonburg
NAICS Code: 621610
Harrisonburg, VA22801 No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 08/15/2011 BNPI:
To: 12/13/2011 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Compliance (no violations found) Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

TH- . FLSA 3(s)(1)(A) ent cov. FLSA nursing mother (b) (7)(E) No violations found. De minimis OT viol due to OT computation using straight avg of two rates rather than weighted average not pursued. ER advised of liability and proper computation of weighted avg for future compliance. ER ATC. Pubs: HRG, FLSA, Regs. 541 & 778, Fact Sheets #14, #17, #25 & #73.

WHI Signature: _____ Date: 01/18/2012

Reviewed By: _____ Date: _____

Carefree Home Health & Companions, Inc.
dba Carefree Home Health & Companions, Inc.
460 Hidden Creek Lane
Harrisonburg, Virginia 22801
EIN: 56-2297051
Telephone: (540) 434-9898
Contacts: Sharon Miller
 Connie Whetzel

COVERAGE

Subject is a home health care provider owned and operated by Sharon Miller, President, and Connie H. Whetzel, Secty. The business was established and incorporated in Virginia on 9/30/2002. The firm provides both skilled and unskilled in-home health care services to clients in the geographic areas of Rockingham, Augusta, Page and Shenandoah Counties of Virginia. Clients include the elderly, disabled and critically ill children. Most of the clients are private pay with approximately 10% being covered by Medicaid. The firm is not Medicare certified. Ms. Miller reports there are currently 58 employees (including the two owners) and the average employment is around (b) (4). Corporate offices are located at the subject address. Sharon Miller and Connie Whetzel meet the definition of a 3(d) employer as they share control of the day to day operations of the business as well as hiring/firing, setting pay practices, making job assignments and scheduling work hours. There are no branch establishments.

Ms. Miller estimated the firm's ADV for the past three years to be approximately (b) (4) per year. The employer provided a profit and loss statement covering 12/13/2008 through 12/13/2011 showing combined gross revenue of (b) (4) (Ex. C-2). Employees handle goods that have moved in commerce such as gloves and various vaccines. The employer reports that most of the firm's supplies are purchased from Moore Medical located in Scottsdale, AR (Ex. C-3a). Section 203(s)(1)(A) enterprise coverage is asserted for the entire SIP of 8/15/2011 to 12/13/2011.

This case action was initiated (b) (7)(E) (b) (6), (b) (7)(C) under the Nursing Mother provisions of FLSA, Section 207(r). The case action is limited to addressing

(b) (7)(E) issues for (b) (6), (b) (7)(C).

An initial conference was held by telephone on 12/13/2011. Sharon Miller and Connie Whetzel represented the employer and provided all documentation.

EXEMPTIONS

(b) (6), (b) (7)(C) was initially employed by the firm (b) (6), (b) (7)(C) as a companion and performed non-skilled care such as housekeeping, cooking, feeding, bathing, toileting and administering medication in the form of pills set out by the family daily. This work was that of a companion and exempt from Section 7 of the Act by virtue of FLSA section 13(a)(15).

However, (b) (6), (b) (7)(C) took a period of FMLA leave for the birth of (b) (6), (b) (7)(C) child (b) (6), (b) (7)(C) and it was (b) (6), (b) (7)(C) intention not to return to work for the firm. In July 2011 (b) (6), (b) (7)(C) obtained an LPN license and was rehired by the firm on 8/14/2011 as an LPN performing skilled care such as cleaning and dressing tracheostomy and feeding tubes, measuring and administering liquid medications through the feeding tubes, bathing and turning the client to prevent bed sores. (b) (6), (b) (7)(C), during (b) (6), (b) (7)(C) second period of employment, was not exempt from Section 7 and as such was covered by the Nursing Mother provision of FLSA Section 207(r).

Although the employer has raised hardship issues related to compliance (Ex. D-2), payrolls provided which covers (b) (6), (b) (7)(C) period of employment reveals employment levels of 61-64 per pay period. As such, the employer is not eligible for the exemption from the Nursing Mother provisions found at Section 207(r)(3) for employers of less than 50 employees.

STATUS OF COMPLIANCE

There is no Wage-Hour history of the employer.

Section 207(r) – Nursing Mother Provisions

On 9/16/2011 former employee (b) (6), (b) (7)(C) (b) (7)(E) that prior to taking maternity leave (b) (6), (b) (7)(C) was working 24 to 30 hours a week but after returning to work (b) (6), (b) (7)(C) was scheduled to work 20-24 hours a week. (b) (6), (b) (7)(C) stated (b) (6), (b) (7)(C) hours were reduced after (b) (6), (b) (7)(C) notified the company that (b) (6), (b) (7)(C) would need two 15-minute breaks during work hours to express milk (see Form WH-3).

When interviewed, (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) began working for the firm on (b) (6), (b) (7)(C) as a CNA performing in-home companion duties for primarily clients affected by Alzheimer's disease. Beginning 1/31/2011 (b) (6), (b) (7)(C) took three months of FMLA leave for the birth of (b) (6), (b) (7)(C) child which was born (b) (6), (b) (7)(C) states (b) (6), (b) (7)(C) did not intend to return to work and informed Sharon Miller of (b) (6), (b) (7)(C) intention (Ex. B-1). (b) (6), (b) (7)(C) (b) (7)(E) (b) (6), (b) (7)(C) hours were reduced upon returning to work (b) (6), (b) (7)(C) because of (b) (6), (b) (7)(C) need to express milk is (b) (7)(E) (b) (6), (b) (7)(C) prior employment was terminated and the employer was therefore under no obligation to return (b) (6), (b) (7)(C) to (b) (6), (b) (7)(C) previous schedule at the beginning of a new period of employment (b) (6), (b) (7)(C).

(b) (6), (b) (7)(C) (b) (7)(E) (b) (6), (b) (7)(C) met with Sharon Miller in August 2011 (8/9/2011 according to the employer) regarding returning to work for the firm. At this meeting, (b) (6), (b) (7)(C) states (b) (6), (b) (7)(C) requested to work 9 am to 3 pm (6 hours) but Ms. Miller stated that the only shifts available were 7 am to 3 pm or 8 am to 4 pm (8-hour shifts). (b) (6), (b) (7)(C) agreed to try these shifts for a couple days a week but advised Ms. Miller (b) (6), (b) (7)(C) could not work more than 30 hours a week. During that same meeting (b) (6), (b) (7)(C) states (b) (6), (b) (7)(C) advised Ms. Miller (b) (6), (b) (7)(C) would have to express milk every four hours and Ms. Miller stated this would not be a problem. There were no witnesses to this meeting and no written documentation exists to corroborate (b) (6), (b) (7)(C) statement that (b) (6), (b) (7)(C) advised the employer (b) (6), (b) (7)(C) would need pumping breaks (Ex. B-1).

(b) (6), (b) (7)(C) was scheduled to work two 8-hour shifts the first week. (b) (6), (b) (7)(C) was late on the first day and states (b) (6), (b) (7)(C) took two 15-minute breaks to pump in (b) (6), (b) (7)(C) car but did not inform the employer that (b) (6), (b) (7)(C) took the breaks. Per (b) (6), (b) (7)(C), the second shift was cancelled without an explanation, a common practice of the employer. (b) (6), (b) (7)(C) claims that Ms. Miller later told (b) (6), (b) (7)(C) could not work with this client because (b) (6), (b) (7)(C) had to express. (b) (6), (b) (7)(C) was assigned another client the following week and the employer wanted (b) (6), (b) (7)(C) to work 4 – 10 pm but (b) (6), (b) (7)(C) told Ms. Miller (b) (6), (b) (7)(C) could not work that late. Per (b) (6), (b) (7)(C), the

client had hours of 7-2 pm but Ms. Miller denied (b) (6), (b) (7)(C) these hours because (b) (6), (b) (7)(C) had to pump. (b) (6), (b) (7)(C) was scheduled to work 3-8 pm, four days a week. (b) (6), (b) (7)(C) did, however, work three 7-hour shifts with this client, 7:30 am to 3:30 pm (timesheet at Ex. E-1c). (b) (6), (b) (7)(C) states that (b) (6), (b) (7)(C) continued to take 15-minute pumping breaks in the client's bathroom 1-2 times per shift with the client's permission but did not tell the employer. On the last three shifts with this client (b) (6), (b) (7)(C) states (b) (6), (b) (7)(C) decided to pump in (b) (6), (b) (7)(C) car on the way to work because (b) (6), (b) (7)(C) of the client was not at home and (b) (6), (b) (7)(C) was not well. (b) (6), (b) (7)(C) worked with this client until 9/14/2011 when (b) (6), (b) (7)(C) was pulled off the case because the client's case worker advised the employer that (b) (6), (b) (7)(C) did not have the requisite experience to sit with a tracheostomy patient. (b) (6), (b) (7)(C) was assigned to a third client beginning on 9/16/2011 and was scheduled to work 4 pm to 8 pm. (b) (6), (b) (7)(C) states that (b) (6), (b) (7)(C) went to the office on 9/16/2011 to pick up (b) (6), (b) (7)(C) schedule for the following week and was told by Sharon Miller that (b) (6), (b) (7)(C) did not have a schedule for the following week because the company could no longer "accommodate (b) (6), (b) (7)(C) needs". (b) (6), (b) (7)(C) admits (b) (6), (b) (7)(C) did not request any explanation of this statement nor did Ms. Miller tell (b) (6), (b) (7)(C) was terminated. (b) (6), (b) (7)(C) simply turned around and left. (b) (6), (b) (7)(C) later called the office in the early afternoon, prior to the 4 pm shift, and advised an administrative staff member that since (b) (6), (b) (7)(C) did not have a schedule for the following week (b) (6), (b) (7)(C) was not going to work that evening either. (b) (6), (b) (7)(C) states (b) (6), (b) (7)(C) had no further contact with the employer until (b) (6), (b) (7)(C) picked up (b) (6), (b) (7)(C) check the following week, at which time (b) (6), (b) (7)(C) also received a free flu shot (Ex. B-1 & E-7c).

Sharon Miller denies that (b) (6), (b) (7)(C) advised her of the need for pumping breaks in the 8/9/2011 meeting. The employer acknowledges that during the meeting (b) (6), (b) (7)(C) told her (b) (6), (b) (7)(C) was nursing and that (b) (6), (b) (7)(C) did pump. However, the employer states that (b) (6), (b) (7)(C) never mentioned the frequency of (b) (6), (b) (7)(C) pumping nor that (b) (6), (b) (7)(C) would have to pump on the job. The employer states that (b) (6), (b) (7)(C) never requested time for nursing breaks. The employer states that nurses are required to be available to work two different shifts and tried to accommodate the restrictions (b) (6), (b) (7)(C) placed on (b) (6), (b) (7)(C) hours. Ms. Miller states that (b) (6), (b) (7)(C) was not allowed to return to the first client because (b) (6), (b) (7)(C) did not want to work an 8-hour shift. The client was a minor with a tracheostomy and dependent on a ventilator. (b) (6), (b) (7)(C) would have had to report to the client's home in the morning, accompany the client to school, remain all day and accompany the child home on the school bus. This would necessitate at least an 8 to 9 hour shift from 7 am to 4 pm. The employer corroborates that (b) (6), (b) (7)(C) was late for the first shift scheduled with this client

but states that (b) (6), (b) (7)(C) called off for the second shift, leaving the client without a nurse. Ms. Miller acknowledges that (b) (6), (b) (7)(C) was assigned to a second client and that (b) (6), (b) (7)(C) was removed from that client on 9/14/2011 due to the lack of experience required by the Department of Medical Assistance Services. The employer states (b) (6), (b) (7)(C) was assigned a shift for a third client on 9/15/2011 but refused the shift because it was too long. Ms. Miller corroborates that (b) (6), (b) (7)(C) came in on 9/16/2011 to get (b) (6), (b) (7)(C) work schedule for the following week. However, the employer states that when (b) (6), (b) (7)(C) was informed that a schedule had not been work out for (b) (6), (b) (7)(C) for the following week (b) (6), (b) (7)(C) turned around and walked out the door. The employer claims that schedule had not been prepared because of (b) (6), (b) (7)(C) restricted work hours. She also confirms that (b) (6), (b) (7)(C) later called the office 2-3 hours prior to the scheduled shift on 9/16/2011 and advised that (b) (6), (b) (7)(C) would not work that day since (b) (6), (b) (7)(C) did not have a schedule for the following week, again leaving a client without a nurse. It was not until after (b) (6), (b) (7)(C) walked off the job that the employer learned from the family of the second client that (b) (6), (b) (7)(C) had been using their bathroom for nursing breaks with their permission. The employer denies that (b) (6), (b) (7)(C) was discharged and the firm had made every attempt to work with (b) (6), (b) (7)(C) to give (b) (6), (b) (7)(C) the part-time hours (b) (6), (b) (7)(C) wanted, even modifying the care schedule of some clients by reducing the shift hours.

The provisions of Section 207(r) requires that an employer provide nursing mothers with reasonable break time to express milk for a nursing child for 1 year after the child's birth each time an employee has need to express; and a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by the employee to express. There is no requirement that the employer advise the employee of (b) (6), (b) (7)(C) rights to such breaks.

Although the employer does acknowledge that (b) (6), (b) (7)(C) advised Ms. Miller that (b) (6), (b) (7)(C) was nursing and did in fact pump, the employer denies that the employee ever expressed the need to pump during work hours nor did (b) (6), (b) (7)(C) request break time to express. There is no evidence to corroborate that the employee's claim that (b) (6), (b) (7)(C) did request break time. Instead, it appears that (b) (6), (b) (7)(C) placed limitations on the length of shifts (b) (6), (b) (7)(C) was willing to work. (b) (6), (b) (7)(C) admits that (b) (6), (b) (7)(C) did take regular pumping breaks during work time but did not tell the employer. There is no corroboration that the employee was terminated due to the need for pumping breaks. Rather, there appears to be the possibility that (b) (6), (b) (7)(C)

misinterpreted the fact that the work schedule had not yet been prepared to mean that (b) (6), (b) (7)(C) was terminated without getting further clarification from the employer.

(b) (6), (b) (7)(C) (b) (7)(E)

Section 207(a) - Overtime

The employer provided three semi-monthly payrolls for review (9/1/2011, 9/16/2011 & 10/3/2011) to determine the number of employees actually employed. In reviewing the payrolls the Investigator noted that when employees are paid two rates of pay in the same semi-monthly pay period, overtime appeared to be computed at T1/2 a straight average of the two rates rather than on a weighted average. This manner of computation was confirmed with Connie Whetzel, who prepares the payroll (Ex. A-0 and E-6 for samples). Ms. Whetzel acknowledged that she initiated this manner of computing overtime as it seemed the fairest computation. She noted that employees worked the greater number of hours sometimes at the lowest rate and sometimes at the higher rate, so it presumably averaged out over time. Although all hourly employees are paid overtime premiums at T1/2 a single regular rate or T1/2 this averaged rate, the issue does not affect approximately 40 CNAs that are likely exempt under FLSA section 15(a)(3) as companions. However, there are approximately (b) (4) hourly RNs and LPNS who are subject to the overtime requirements and paid in this manner. ((b) (6), (b) (7)(C) did not work overtime as an LPN during the period in question.) The employer states that these employees may work 1-2 hours of overtime in some weeks as the firm attempts to keep hours under 40. Accurate back wage computation would require the review of individual timesheets on a weekly basis to determine the number of hours worked at each rate in the overtime week so that the correct weighted average could be calculated. As this is would be a labor intensive effort and likely to produce de minimis back wages, the resource allocation would not justify the results. Therefore, the employer was advised of the back wage liability and proper computation for future compliance.

Summary of Violations

- The employer failed to correctly compute overtime premiums due employees paid two or more different rates of pay in the same pay period.

DISPOSITION

The Investigator held a final conference by telephone on 1/11/2012 with owners Sharon Miller and Connie Whetzel. FLSA enterprise coverage was explained as the employer's were not familiar the coverage requirements. The Investigator next explained the requirements of the Nursing Mother provisions of Section 207(r) of the Act. Exemptions were briefly discussed and the employer was advised that (b) (6), (b) (7)(C) did not qualify for any exemption from section 7 of the Act and was therefore covered by the nursing mother provisions and entitled to break time for the purpose of expressing milk.

Both employer's admitted that they had no knowledge of these provisions prior to contact by the Investigator but that (b) (6), (b) (7)(C) never requested any break time. They state that if (b) (6), (b) (7)(C) had actually stated (b) (6), (b) (7)(C) needed breaks during work time rather than placing restrictions on the length of the shifts (b) (6), (b) (7)(C) was willing to work the matter would have been addressed. The employer assumed that the reason (b) (6), (b) (7)(C) would not work a full shift was because (b) (6), (b) (7)(C) was pumping or nursing before or after (b) (6), (b) (7)(C) shift. They also noted that (b) (6), (b) (7)(C) did not annotate any break time on (b) (6), (b) (7)(C) time sheet and was therefore paid for the entire shift. Ms. Miller again stated that it was after (b) (6), (b) (7)(C) walked off the job that they learned (b) (6), (b) (7)(C) had indeed been taking breaks. The employer states they had never had any issue with nursing mothers in the past and this issue would not have been a problem had (b) (6), (b) (7)(C) communicated (b) (6), (b) (7)(C) need to them.

Both Ms. Miller and Ms. Whetzel assured future compliance and were advised the firm would have to figure a way to comply, perhaps by assigning nursing mothers to clients who are willing to allow the employee to use a private room express. The Investigator reiterated that a private bathroom may not be used. The employer's stated they would work to find a way to comply in the future.

The employer's overtime computations for employees paid two rates in the same pay period was discussed. Connie Whetzel confirmed that she simply averaged the two rates and paid T1/2 the averaged rate for the hours over 40 each week within the pay period. The Investigator explained that a weighted average was to be used in this instance and explained the difference between the two computations. Ms. Whetzel stated she understood the difference

and would use a weighted average in the future. The employer was advised of the potential back wage liability due to the miscalculation. Ms. Whetzel stated that she tried to keep overtime hours to a minimum and thought the overtime paid likely averaged out over time.

The employers agreed to future compliance by:

- Complying with the nursing mothers provision of the Act by allowing nursing mothers the necessary break time and a private area in which to express.
- Correctly computing overtime premiums using a weighted average when employees work two or more rates of pay in an overtime workweek.

Publications provided: HRG, FLSA, Reg. 541, Reg. 778, FS #14 (coverage), FS #17N (Nurses/541), #25 (home health care industry), #73 (break time for nursing mothers)

(b) (7)(E) the Investigator contacted Connie Whetzel on 1/17/2012 and advised Ms. Whetzel that no further action would be taken at this time regarding the erroneous overtime computation. Ms. Whetzel was advised; however, that since the firm had now been advised of the correct computation of overtime using the weighted average, the firm was expected to correctly compute overtime premiums from this point on. Ms. Whetzel stated she had reviewed the publications provided and now understood how to compute the overtime premium based on the weighted average. A sample computation was reviewed with the employer and she agreed to immediately begin to compute overtime accordingly.

(b) (6), (b) (7)(C) was contacted by phone on 1/18/2012 and advised of the investigative findings. (b) (6), (b) (7)(C) was grateful that the employer had been put on notice about the requirements for breaks for nursing mothers. When asked how (b) (6), (b) (7)(C) learned of these requirements (b) (6), (b) (7)(C) stated (b) (6), (b) (7)(C) was made aware of the requirements while attending nursing school during the day while (b) (6), (b) (7)(C) was working for Carefree and caring for the infant.

RECOMMENDATIONS

Recommend administrative closing without further action.

(b) (6), (b) (7)(C)

Wage-Hour Investigator

1/18/2012

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1632760 Originating District: Albany NY District Office
Local Filing Number: 2012-101-05138 Investigating District: Albany NY District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 10/05/2011
Assignment Date: 10/05/2011

Employer Information

Trade Name: Lake Shore Hospital
Address: 845-Route 5 & 20

Irving, NY 14081

Legal Name: TLC Health Network
EIN: 16-0772474
County: Erie
NAICS Code: 622110
No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 01/20/2011 BNPI:
To: 10/20/2011 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Full Investigation Future Compliance Agreed: ☒
Compliance Status: Compliance (no violations found) Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

FLSNM - covered enterprise. Firm did not provide adequate space for nursing mothers. (b) (7)(E) the firm did provide a secure room with adequate facilities. Pubs: FLSA HRG, FS #73. FC w/ Tracie Luther - ATC. Rec admin close.

WHI Signature: _____ Date: 10/28/2011

Reviewed By: _____ Date: _____

TLC Health Network

DBA: Lake Shore Hospital

845 Routes 5&20

Irving, NY 14081

EIN: 16-0772474

COVERAGE

Firm is a hospital. Firm employs approximately (b) (4) employees. ADV is in excess of \$500,000. All employees handle goods produced in interstate commerce on a daily basis. Firm is a named enterprise pursuant to section 3(s)(1)(B) of the FLSA and all employees are covered for the entire period of investigation.

EXEMPTIONS

None applicable. The firm employs more than 50 employees and both employees that utilized the break time are not exempt from overtime.

STATUS OF COMPLIANCE

This investigation was initiated (b) (7)(E) (b) (6), (b) (7)(C) (b) (7)(E) the firm was not providing adequate space for breaks for nursing mothers. (b) (7)(E) but corrected prior to initial conference.

Per the amendment requiring breaks for nursing mothers, a covered firm must provide reasonable break time for nursing mothers to express milk. The place must be a space other than a bathroom, shielded from view and free from intrusion.

(b) (6), (b) (7)(C) requested space to express milk for a child (b) (6), (b) (7)(C) was originally told that no room was available. (b) (6), (b) (7)(C) was then provided with a room that locked but that didn't have any surface on which to put pump. That room became unavailable so (b) (6), (b) (7)(C) was given a different room. (b) (6), (b) (7)(C) had to sit on a wheelchair and put equipment on another wheelchair in that room. (b) (6), (b) (7)(C) was then moved to a third room. This was a room that was primarily used for group therapy sessions but (b) (6), (b) (7)(C) was allowed the use of it when it was unoccupied. (b) (6), (b) (7)(C) was then

moved to a fourth room. This was a storage room. The proposal was to put up a curtain in the corner of the room for privacy as other employees would have access to the room at all times. Finally, (b) (6), (b) (7)(C) and another employee were provided with another room. This room supposedly only had one key so that if they were using the room to express milk, they would have the key and no other employees could enter the room. However, it turns out that there was another key and a male employee walked in on (b) (6), (b) (7)(C) while (b) (6), (b) (7)(C) was pumping (see exhibit B-1). At that point, the room that is currently being used was provided. This room has a table and chair, electric, a locked door and a sign stating that the room is occupied. It appears to meet the requirements of the law.

Reasonable break time was provided for expressing milk. No violations of the break requirement were disclosed.

DISPOSITION

A final conference was held at the establishment on 10/20/2011. Present for the firm was Tracie Luther, HR Manager. Present for the Department was WHI (b) (6), (b) (7)(C)

The requirements of the amendment were presented in full. Ms. Luther stated that they had had some issues with space but that they believe the room that is being used now is adequate for break time. She stated that she would be putting a formal policy into place with regard to the break time for nursing mothers. She agreed to future compliance with the Act.

Publications provided: FLSA HRG, FS #73

(b) (6), (b) (7)(C) was notified of the findings of the investigation telephonically on 10/26/2011.

RECOMMENDATION

Recommend the file be closed administratively.

(b) (6), (b) (7)(C)

WHI

10/28/11

FLSANM NARRATIVE REPORT

Trade Name: Jo-Ann Fabric and Craft Stores
Legal Name: Jo-Ann Stores, LLC

Local Filing Number:
2015-250-08581

Subject location: 160 Tyler Road North
Red Wing, Minnesota 55066
Telephone: (651) 388-9868

Case ID: 1751164
Tax ID: 34-0720629

Corporate Headquarters: 5555 Darrow Road
Hudson, Ohio 44236
(888) 739-4120

Legal Representative:
Littler Mendelson
John Lassetter, Attorney
1300 IDS Center
Minneapolis, Minnesota 55401
(612) 630-1000

COVERAGE

The subject firm is a large multi-unit retail employer that sells fabric and craft supplies. The firm has locations throughout the United States. The corporate headquarters are located in Hudson, Ohio. The corporate structure is as follows: Jo-Ann Stores, LLC is an Ohio corporation organized under Needle Holdings, LLC, a Delaware corporation which is organized under Jo-Ann Stores Holdings Inc., also a Delaware corporation. The subject location is the retail store located in Red Wing, Minnesota, and this investigation was limited to a determination of this location's compliance under the Fair Labor Standards Act's break time provisions for nursing mothers (FLSANM). (See Exhibit C-1).

The firm's attorney, John Lassetter of Littler Mendelson, confirmed that the subject employer has an ADV in excess of \$500,000, and that the corporation employs well in excess of 50 employees throughout its many locations (Exhibit C-1). The subject location employs ^{(b) (7)(E)} employees. Jo-Ann Fabrics is covered under 3(s)(1)(A) of the FLSA and is bound by the requirements under Section 7(r) for break time for nursing mothers because the firm employs more than fifty employees.

Period of Investigation: February 13, 2013 to February 12, 2015

MODO: The corporate headquarters of Jo-Ann Fabrics is located in Hudson, Ohio. (b) (7)(E)
(Exhibit D-1).

EXEMPTIONS

Section 13(a)(1):

Exemptions under 13(a)(1) were only reviewed as they pertain to (b) (6), (b) (7)(C) position and (b) (6) eligibility for break time for nursing mothers under Section 7 of the Fair Labor Standards Act. The exemptions under 29 CFR 541 are **not applicable** to (b) (6), (b) (7)(C) position of manager because (b) (6) is paid hourly and not on the salary basis (Exhibit B-1).

No other exemptions were reviewed due to the limited nature of this investigation.

STATUS OF COMPLIANCE

History: No history under FLSANM.

Reason for Investigation: This investigation began after (b) (6) (b) (7)(E) the employer's failure to provide reasonable and frequent enough break time for expressing breast milk. (b) (7)(E) and (b) (6), (b) (7)(C) was notified of the outcome on February 17, 2015.

Section 6: No determination of compliance under Section 6 was made due to the limited nature of this investigation.

Section 7: Section 7(r) violations disclosed due to the employer's failure to provide a reasonable amount of break time as frequently as needed by the nursing mother. (b) (6), (b) (7)(C) required three breaks per scheduled shift and was only provided with two breaks during which (b) (6) could express breast milk.

No other determinations of compliance were made under Section 7 due to the limited nature of this investigation.

Section 11: No determination of compliance under Section 11 was made due to the limited nature of this investigation.

Section 12: No determination of compliance under Section 12 was made due to the limited nature of this investigation.

DISPOSITION

An initial conference was held on February 12, 2015, during which WHIs (b) (6), (b) (7)(C) and (b) (6), (b) (7) met with the store manager, Rochelle Mergenthal, and the firm's attorney, John Lassetter. The requirements under Section 7(r) of the FLSA were reviewed and the employer immediately agreed to comply. WHI (b) (6), (b) (7)(C) and (b) (6), (b) (7) toured the establishment and inspected

the space provided for employees requiring break time to express milk (Exhibit D-6).

A final conference was held by telephone on Wednesday, February 25, 2015. In attendance on the call were Attorney John Lassetter, Rochelle Mergenthal (store manager), Kathy Scadden (Manager for Team Member Relations at the corporate headquarters), and WHIs (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C).

WHI (b) (6), (b) (7)(C) explained that this investigation was limited to the store's compliance with Section 7(r) of the FLSA and that no other determinations of compliance under the FLSA were made.

WHI (b) (6), (b) (7)(C) explained that Jo-Ann Fabrics is covered because it employs in excess of fifty employees, and therefore cannot allege that compliance with Section 7(r) would cause undue hardship, and that all employees that are not exempt under Section 7 of the FLSA are subject to Section 7(r). The investigator explained that a violation was disclosed when the store failed to provide (b) (6), (b) (7)(C) with the frequency of breaks (b) (6), (b) (7)(C) required. Ms. Scadden immediately reaffirmed the firm's intent to comply with the law and stated that she would be reviewing the firm's policy to ensure compliance company-wide.

Publications provided: HRG, Fact Sheets #44, 73, 77A, FLSA, FMLA

Recommendations: WHI recommends administrative close (b) (7)(E).

(b) (6), (b) (7)(C)

Wage Hour Investigator
February 26, 2015

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1614447 Originating District: Sacramento District Office
Local Filing Number: 2011-302-04394 Investigating District: Sacramento District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 03/31/2011
Assignment Date: 03/31/2011

Employer Information

Trade Name: Robinson Elementary School Legal Name: Fresno Unified School District
Address: 555 E. Browning Ave EIN: EIN Missing
2309 Tulare Street, Fresno, CA 93721 County: Fresno
Fresno, CA 93710 NAICS Code: 09210
No. Of Employees: 100

Investigation Information

Period Investigated From: 03/25/2011 BNPI: 0
To: 04/01/2011 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Full Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
No Violation found for this act / Compliance (no violations found)					\$0.00	\$0.00	
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
Failure to provide adequate space / Agree to Comply	1	0	\$0.00	\$0.00	\$0.00	\$0.00	
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

ENT COV-3(s)(1)(B).INV limited to Sec 7(r) FLSA-Break Time for Nursing Mothers.2009 PI.C not EX from Sec 7 FLSA.Sec 7(r) applicable.Viols:Sec 7(r)(1)B-Fail to provide adequate space, Nursing mother expressed milk in storage room W/windows not shielded from view from co-workers&the public.FC(4/1/2011)held W/Antonio Sanchez(Principal)&Melodie Williams(Office Mgr).ER not aware of all requirements under Sec 7(r).No BWs/CMPs.ATC W/FLSA-Sec 7(r) notified.REC Admin close W/no further action.Pubs-see narrative.

WHI Signature: _____ Date: 04/08/2011

Reviewed By: _____ Date: _____

FLSA NARRATIVE REPORT

Whisard ID #1614447 and Local Case File #2011-302-04394

Trade Name: Robinson Elementary School
Legal Name: Fresno Unified School District
555 E. Browing Avenue
Fresno, CA 93710

PH: (559) 451-4550
FAX: (559) 435-2711

GENERAL SUMMARY

This INV was assigned to and conducted by INV (b) (6), (b) (7)(C) (b) (7)(E) (b) (6), (b) (7)(C) (b) (7)(E) the Principal at Robinson Elementary School had not granted (b) (6), (b) (7)(C) permission to express milk for (b) (6), (b) (7)(C) nursing child during work hours; therefore, violating (b) (6), (b) (7)(C) rights under the Break Time for Nursing Mothers Provision of the FLSA. The INV (b) (7)(E) violations under Section 7(r) of the FLSA-Break Time for Nursing Mothers Provision. There were no BWs computed or due to EEs. There were no CMPs computed. The period of INV was limited to (b) (6), (b) (7)(C) and Section 7(r) of the FLSA- Break Time for Nursing Mothers Provision, from 03/25/2011 to 04/01/2011 beginning with the date (b) (6), (b) (7)(C) returned back to work through the site visit/FC date. (b) (6), (b) (7)(C) (b) (7)(E)

COVERAGE

Robinson Elementary School is part of the Fresno Unified School District. Fresno Unified School District is the 4th largest school district in California, operates 64 elementary schools, and serves more than 73,000 students; therefore, (b) (6), (b) (7)(C) and all EEs of the Robinson Elementary School are covered under section 3(s)(1)(B) of the FLSA for the entire period of INV from 03/25/2011 to 04/01/2011. (See exhibits C-1-a to C-4)

PRIOR HISTORY

According to the DOL's Whisard program, there was prior history found on Fresno Unified School District as follows:

- Whisard ID #1567926 & Local #2010-302-03897; Assigned on 12/21/2009; Concluded on 01/04/2010; (b) (7)(E) FC conducted on 12/22/2009 with Melisa Beltron, HR; Violations: MW not paid for all HW & record of HW not kept; \$1,512.35 BWs computed and paid; No CMPs computed or assessed. (See exhibits D-1 & D-2)

MODO

The Sacramento DO is the MODO for Robinson Elementary School/Fresno Unified School District. Robinson Elementary School/Fresno Unified School District's main office is located in Fresno, CA.

EXEMPTIONS

(b) (6), (b) (7)(C) is not exempt from the Section 7-OT provisions of the FLSA; therefore, entitle to the Break Time for Nursing Mothers Provision under the FLSA. (b) (6), (b) (7)(C) is paid an hourly rate of (b) (6), (b) (7)(C) and is a teacher's aide. (b) (6), (b) (7)(C) is not a teacher, does not have teaching credentials, and only assists the teacher. (See exhibits B-1-a & C-1-a/b)

STATUS OF COMPLIANCE

Section 7(r)(1)A – A Reasonable Break Time

There were no violations found during the INV under Section 7(r)(1)A of the FLSA. (b) (6), (b) (7)(C) (b) (7)(E) the Principal at Robinson Elementary School had not granted (b) (6), (b) (7)(C) permission to express milk for nursing child during work hours. Per (b) (6), (b) (7)(C) interview statement and IC held with Antonio Sanchez, Principal, and Melodie Williams, Office Manager, it was determined that (b) (6), (b) (7)(C) was not denied (b) (6), (b) (7)(C) right to express milk for nursing child and was provided a reasonable break time to express milk. (b) (6), (b) (7)(C) has been allowed to express milk daily since the first day (b) (6), (b) (7)(C) returned back to work on (b) (6), (b) (7)(C) work schedule is from 7:45 am to 2:15 pm, and has expressed milk daily, every 2 hours (9:45 am, 11:45 am & 1:45 pm), 20 to 30 minutes per break. (b) (6), (b) (7)(C) also

provided a doctor's note to the Principal and Office Manager which stated that (b) (6), (b) (7)(C) was required to express milk every 2 hours for 20 minutes. During (b) (6), (b) (7)(C) interview, (b) (6), (b) (7)(C) disclosed that (b) (6), (b) (7)(C) was concerned that the Principal had not properly informed (b) (6), (b) (7)(C) verbally or in writing that (b) (6), (b) (7)(C) was allowed to express milk at work even though (b) (6), (b) (7)(C) was allowed to express milk during work hours since the first day (b) (6), (b) (7)(C) returned back to work on (b) (6), (b) (7)(C) (See exhibits B-1, C-1-c-e & D-4)

Section 7(r)(1)B – A Place Shielded from View and Free from Intrusion

There were violations found during the INV under Section 7(r)(1)B of the FLSA. (b) (6), (b) (7)(C) utilized a storage room to express milk daily which was located inside the main office adjacent to the principal's personal office. (b) (6), (b) (7)(C) was offered the nurses room to express milk which was also located inside the main office, but instead chose to utilize the storage room since it had a water sink. INV (b) (6), (b) (7)(C) toured the storage room and observed that the door could be locked from the inside; therefore, free from intrusion from co-workers and the public. The principal and office manager are the only individuals that have a key to open the storage room, but would not open it if (b) (6), (b) (7)(C) was utilizing the room during (b) (6), (b) (7)(C) expressing milk break. INV (b) (6), (b) (7)(C) also observed that the storage room had high windows that were exposed and not covered; therefore, a violation under Section 7(r)(1)B since the windows were not shielded from view from co-workers and the public. (See exhibits B-1-c, C-1-e & D-5)

Section 12 - CL

There were no CL violations found during the INV. There were no minors under the age of 18 working at Robinson Elementary School. (See exhibits B-1-d & C-1-e)

DISPOSITION

On 04/01/2011, INV (b) (6), (b) (7)(C) held an IC and FC with Antonio Sanchez, Principal, and Melodie Williams, Office Manager, at Robinson Elementary School which is located at 555 E. Browning Avenue, Fresno CA 93710. During the FC, COV, prior history, EX, and the Break Time for Nursing Mothers and CL provisions under the FLSA were discussed and explained in detail to Mr. Sanchez and Ms. Williams. In addition, Mr. Sanchez and Ms. Williams were informed that there were violations found during the INV under Section 7(r) of the FLSA-Break Time for Nursing Mothers Provision as follows:

- Section 7(r)(1)B – A Place Shielded from View and Free from Intrusion: (b) (6), (b) (7)(C) utilized a storage room daily to express milk for (b) (6), (b) (7)(C) nursing child which had high windows that were exposed and not covered; therefore, a violation under Section 7(r)(1)B since the windows were not shielded from view from co-workers and the public. **Note:** The exposed windows in the storage room were immediately covered with blue paper during the FC as instructed by INV (b) (6), (b) (7)(C) (See exhibit D-5)

Mr. Sanchez and Ms. Williams were advised that the following must be ensured in order to come into compliance with Section 7(r) of the FLSA-Break Time for Nursing Mothers Provision:

- Provide an EE/nursing mother with a functional place to express milk for her nursing child, other than a bathroom, that is shielded from view and free from intrusion from co-workers and the public.

Mr. Sanchez and Ms. Williams verbally disclosed the following reason why they were not in compliance with Section 7(r) of the FLSA-Break Time for Nursing Mothers Provision:

- (b) (6), (b) (7)(C) was allowed to utilize a storage room to express milk daily for (b) (6), (b) (7)(C) nursing child since the first day (b) (6), (b) (7)(C) returned back to work on (b) (6), (b) (7)(C), but were not aware of all the requirements under Section 7(r) including that the room utilized by the nursing mother to express milk had to be completely shielded from view from co-workers and the public.

Mr. Sanchez and Ms. Williams verbally disclosed that as of 04/01/2011, they would immediately come into compliance with Section 7(r) of the FLSA-Break Time for Nursing Mothers Provision, and would take corrective action as explained to them during the FC. In addition, Mr. Sanchez and Ms. Williams were given a copy of and instructed to read Section 7(r) of the FLSA-Break Time for Nursing Mothers Provision and Section 15(a)(3)-Prohibited Acts, and agreed to the following:

- Provide a reasonable break time for an EE to express breast milk for her nursing child for 1 year after the child's birth each time such EE has need to express the milk.

DISPOSITION – CONTINUED

- Provide a place, other than a bathroom, that is shielded from view and free from intrusion from co-workers and the public, which may be used by an EE to express breast milk.
- Will not discharge or retaliate against (b) (6), (b) (7)(C) because (b) (6), (b) (7)(E) in regards to (b) (6), (b) (7)(C) rights under Section 7(r) of the FLSA-Break Time for Nursing Mothers Provision.

In addition, even though (b) (6), (b) (7)(C) has been allowed to express milk for (b) (6), (b) (7)(C) nursing child and provided a reasonable break time to express milk since the first day (b) (6), (b) (7)(C) returned back to work on (b) (6), (b) (7)(C), (b) (6), (b) (7)(C) Mr. Sanchez verbally agreed to properly re-inform (b) (6), (b) (7)(C) of (b) (6), (b) (7)(C) right to express milk for (b) (6), (b) (7)(C) nursing child under Section 7(r) of the FLSA. Furthermore, Ms. Williams disclosed that a sign reading “Room in Use” would be prepared and hung on the front door of the storage room when utilized by (b) (6), (b) (7)(C) to express (b) (6), (b) (7)(C) milk.

BWs

There were no BWs computed.

CMPs

There were no CMPs computed.

(b) (6), (b) (7)(C) Notification

On 04/01/2011, an attempt to contact (b) (6), (b) (7)(C) via telephone was conducted, and a male answered the telephone and hung up. On 04/04/2011, a second attempt to contact (b) (6), (b) (7)(C) via telephone was conducted, and a message was left on (b) (6), (b) (7)(C) voicemail to return INV (b) (6), (b) (7)(C) telephone call. On 04/06/2011, a third attempt to contact (b) (6), (b) (7)(C) via telephone was conducted, and (b) (6), (b) (7)(C) answered the telephone and hung up. On 04/06/2011, a fourth and final attempt to contact (b) (6), (b) (7)(C) via telephone was conducted, and a message was left on (b) (6), (b) (7)(C) voicemail disclosing that the INV in regards to (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) had been completed, and to contact INV (b) (6), (b) (7)(C) if (b) (6), (b) (7)(C) wanted to know the outcome of the INV.

Recommendation

(b) (7)(E) it is recommended that this case be administratively closed and that no further action be taken.

DISPOSITION – CONTINUED

WH Publications Provided

Statutory Language-Section 7(r) of the FLSA-Break Time for Nursing Mothers; Fact Sheet #73-Break Time for Nursing Mothers under the FLSA; Frequently Asked Questions-Break Time for Nursing Mothers; Federal Register/Vol. 75, No. 244/Tuesday, December 21, 2010-Reasonable Break Time for Nursing Mothers; FLSA (WH-1318); CL (WH-1330); and Statutory Language-Section 15(a)(3) & 215-Prohibited Acts.

(b) (6), (b) (7)(C)

Wage and Hour Investigator
04/07/2011

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1618795 Originating District: Phoenix District Office
Local Filing Number: 2011-279-07622 Investigating District: Phoenix District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 05/10/2011
Assignment Date: 06/27/2011

Employer Information

Trade Name: Scottsdale Healthcare Hospital

Legal Name: Scottsdale Healthcare Corp.

Address: 9003 E. Shea Blvd.

EIN: 94-2735850

County: Maricopa

NAICS Code: 622110

Scottsdale, AZ85260

No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 03/23/2010

BNPI:

To: 06/29/2011

Reinvestigation: ☐

Investigation Type: (b) (7)(E)

Recurring Violation: ☐

Investigation Tool: Limited Investigation

Future Compliance Agreed: ☒

Compliance Status: Agree to Comply

Involved in AG: ☐

Recommended Action:

BWFS: ☐

RO/NO Review: ☐

CMP: ☐

Follow Up Investigation: ☐

Litigation: ☐

Other Action: ☐

Civil Action: ☐

Denial of Future Certificate: ☐

Criminal Action: ☐

BW Payment Deadline:

Submit For Opinion: ☐

Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
No Violation found for this act / Compliance (no violations found)					\$0.00	\$0.00	
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
Failure to provide adequate space / Agree to Comply	3	0	\$0.00	\$0.00	\$0.00	\$0.00	
FLSNM Totals:	0	3	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

17.5hrs- FLSANM-cov. under section 3(s)(1)(B); (b) is non-exempt pharm tech. (b) (7)(E) (b) (6), (f) was not provided an accessible, private space for expressing breast milk and often had to use restroom. (b) worked at Shea Hospital campus (3 hospitals in total). Sec. 7 (r) via (b) (7)(E) as additional IN's/ tour of est. revealed 3 non-exempt EE's used restrooms/break rooms. FC held on 07/22/11 w/ HR J. Marshall; firm ATC by increasing communication w/ EE's and creating temp locations if needed. Rec admin close.

WHI Signature: _____ Date: 07/25/2011

Reviewed By: _____ Date: _____

Scottsdale Healthcare Hospital Case ID: 1618795

Corporate Office:

Scottsdale Healthcare Corp.
Dba: Scottsdale Healthcare- Osborn Hospital
7400 E. Osborn Rd.
Scottsdale, AZ 85251
Phone: 480-882-4000
www.shc.com
EIN: 94-2735850

Additional Locations:

Scottsdale Healthcare- Shea Hospital
9003 E. Shea Blvd.
Scottsdale, AZ 85260
Phone: 480-323-3000

Scottsdale Healthcare- Thompson Peak Hospital
7400 E. Thompson Peak Parkway
Scottsdale, AZ 85255
Phone: 480-324-7000

Point of Contact:

Mr. Jim Marshall
Director of Human Resources and Organizational Development
9201 E. Mountain View Rd.
Scottsdale, AZ 85258
Phone: 480-323-4528
Direct: 480-421-8931
Fax: 480-323-4535
jmarshall@shc.org

Representation:

Ms. Kris A. Deyerle
Associate General Counsel
3634 N. Drinkwater Blvd.
Scottsdale, AZ 85251
Phone: 480-882-4049
Mobile: 602-410-6349

FLSA-NM Narrative

Coverage:

The subject firm is health care organization comprised of three major hospital campuses as well as outpatient surgery centers. The organization also offers home health services, community health education and outreach services as well as clinical and research services (see exhibits: C-6 to C-6-a). The organization was founded in 1962 and incorporated in the state of Arizona on 01/30/81 under the legal name Scottsdale Healthcare Corp. (see exhibits: C-7 to C-7-f). The corporate headquarters is located at the Osborn Hospital campus (see exhibit: C-4). The firm is a not-for-profit organization led by a volunteer board of directors comprised of local citizens. The President/CEO is Mr. Thomas Sadvary whom is joined by 16

other individuals to form the executive leadership (see exhibits: C-8 to C-8-d).

Enterprise coverage under section 3(s)(1)(B) of the FLSA applies to the firm as it is a named enterprise. Further, for purposes of determining coverage under the break time requirements for nursing mothers, the subject firm employs well over 50 employees at each hospital campus (see exhibits: C-2 to C-5-a).

This case was a limited investigation. The break time requirement became effective when the Patient Protection and Affordable Care Act was signed into law on March 23, 2010 (see exhibits: E-2 to E-2-a). The investigation covered the period 03/23/10 to 06/29/11.

Exemptions:

(b) (6), (b) (7)(C), Pharmacy Technician
(b) (6), (b) (7)(C), Patient Care Technician
(b) (6), (b) (7)(C), Registered Nurse

The above individuals were found to be non-exempt under Section 7 of the FLSA. These individuals do not meet the salary basis requirement as they are paid on an hourly basis (see exhibits: B-1, B-2 and B-5).

Further exemptions were not explored as the investigation was limited to Section 7(r) of the FLSA regarding reasonable break time for nursing mothers.

Status of Compliance:

Prior History: Whisard history shows that two (b) (7)(E) were conducted at the Shea Hospital location in 2000 and 1996 regarding FMLA (see exhibits: D-1 to D-2-a).

MOD0 Instructions: The corporate office for the firm is located in Scottsdale, Arizona. The Phoenix DO is responsible for this geographic area. (b) (7)(E) (see exhibits: D-3 to D-3-c).

Status of Compliance: This investigation was initiated (b) (7)(E) (b) (6), (b) (7)(C) has been employed as a Pharmacy Technician at the Shea hospital since 2007. (b) (6), (b) (7)(C), (b) (7)(E) the firm did not provide a private place, other than a bathroom, to express breast milk. (b) (6), (b) (7)(C) explained that when (b) (6), (b) (7)(C) began expressing breast milk at work a co-worker pointed (b) (6), (b) (7)(C) to the NICU nursing room to use. (b) (6), (b) (7)(C) stated if this area was busy, (b) (6), (b) (7)(C) would use the public restroom that had a pumping station for employees and the public to use. (b) (6), (b) (7)(C) also said that sometimes (b) (6), (b) (7)(C) would have to use a regular bathroom stall (see

exhibit: B-1). In early June 2011, (b) (6), (b) (7)(C) was told (b) (6), (b) (7)(C) could no longer use the private NICU nursing room and was told (b) (6), (b) (7)(C) could use the pharmacy office when it is not in use. (b) (6), (b) (7)(C) stated that since this was an office it was consistently occupied and (b) (6), (b) (7)(C) still had to resort to regular bathroom stalls to express breast milk.

WHI called (b) (6), (b) (7)(C) stated that since (b) (7)(E) the firm had set up a private exam for purposes of expressing breast milk in mid-May 2011 (see exhibit: B-1) (b) (6), (b) (7)(C) stated (b) (6), (b) (7)(C) is the only employee using the room and that it is available and accessible anytime (b) (6), (b) (7)(C) needs to use it. However, (b) (6), (b) (7)(C) stated that although (b) (6), (b) (7)(C) is no longer having a problem accessing a space, (b) (6), (b) (7)(C) believes that (b) (6), (b) (7)(C) particular department is the only one that has made this accommodation. (b) (6), (b) (7)(C) said that (b) (6), (b) (7)(C) is aware of other nursing mothers at the hospital that are not provided with a private space. (b) (6), (b) (7)(C) wanted to remain (b) (6), (b) (7)(C) during the investigation and did not provide the names of other nursing mothers.

(b) (7)(E)

WHI conducted a cold call to the establishment on 06/27/11 to initiate the investigation (see exhibit: E-4-b). WHI met with Mr. Jim Marshall, Director of Human Resources and Organizational Development, and Ms. Linda Alba, Director of Benefits and Compensation. An appointment was set for 06/29/11 to return to the establishment when the firm's Associate General Counsel, Ms. Kris Deyerle, could be present. Mr. Marshall stated that he would act as the point of contact throughout the investigation.

WHI returned to the establishment on 06/29/11 and explained the scope and purpose of the investigation to Mr. Jim Marshall, Ms. Linda Alba and Ms. Kris Deyerle, Counsel. WHI explained the coverage requirements which the firm meets as a named enterprise and also explained that the break requirement apply to non-exempt employees, however, Mr. Marshall stated that even employees exempt from Section 7 are still allowed to take breaks in order to express breast milk.

Mr. Marshall provided a copy of the firm's written policy regarding break time for nursing mothers (see exhibits: D-4 to D-4-a). WHI inquired into how the firm communicates the policy. Mr. Marshall stated he was not sure but that he was under the impression each department manager finds a way to inform nursing mothers of the policy upon their return to work. WHI encouraged the firm to look into enhancing communication in order to ensure each department is aware of the company policy and in compliance with the regulation.

Mr. Marshall explained that the Shea hospital has two permanent, dedicated spaces for nursing mothers and marked them on the campus map (see exhibit: C-2). Mr. Marshall stated that the Osborn hospital also has two similar locations and the Thompson Peak hospital, the smallest hospital, has one location (see exhibit: C-2). Mr. Marshall stated the firm has never

set up any temporary locations. WHI raised the potential issue of the extensive size of each campus and the accessibility of the locations (see exhibit: D-6). WHI asked Mr. Marshall where an employee of the building they were currently meeting in would go if they were a nursing mother. He stated they would have to leave the building and cross the street to access the room in the child care center or take the complimentary shuttle to the building.

WHI took a tour of the two rooms available to nursing mothers on the Shea campus. The group waited approximately 10 minutes for the shuttle to arrive to take the group to the first location in the child care center. The room had a space to set down a pump and a place for the mother to sit. The room was private and had a locking door. The shuttle then took the group to the room in the main building which was similar to the first room. After taking the tour and experiencing firsthand the potential lack of accessibility to the dedicated locations, WHI suggested the firm may have to consider temporary locations if a nursing mother is located in a building that is not accessible to one of the dedicated rooms. WHI informed the firm the regulation does not require permanent locations.

WHI requested contact information for current and former nursing mothers from all three hospitals (see exhibit: D-5). WHI interviewed a total of 6 nursing mothers (see exhibits: B-1 to B-6 and E-1). Interviews revealed that three employees, (b) (6), (b) (7)(C) from the Shea hospital, (b) (6), (b) (7)(C), Thompson Peak hospital, and (b) (6), (b) (7)(C) Osborn hospital, expressed that they were not provided with adequate space for expressing breast milk at work (see exhibits: B-1 to B-2 and B-5). (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) used a locker room and a break room in order to express breast milk. (b) (6), (b) (7)(C) said the situation was stressful and uncomfortable as male and female employees were freely walking in and out of the area (see exhibit: B-2). (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) would try to find a clean bathroom to use to express breast milk (see exhibit: B-5).

(b) (6), (b) (7)(C) (b) (7)(E) regarding the firm's failure to provide adequate space was (b) (7)(E) based interviews and information provided by the firm. (b) (6), (b) (7)(C), was notified of the findings on 07/25/11.

Section 6 - Minimum Wage:

No violations were identified during this investigation.

Section 7 - Overtime:

Violation **(b) (7)(E)** The firm failed to provide adequate space for nursing mothers working at the three covered hospitals.

Section 11 – Record Keeping:

No violations were identified during this investigation.

Section 12 - Youth Labor:

No violations were identified during this investigation.

Disposition:

(b) (7)(E) (see exhibits: E-4 to E-4-a). A final conference was held on 07/22/11 via telephone with Mr. Jim Marshall, Director of Human Resources and Organizational Development. WHI discussed the findings of the investigation. WHI reviewed the scope and purpose of the investigation and stated that the investigation covered all three hospitals (Osborn, Shea and Thompson Peak). WHI reviewed the regulation and clarified questions regarding whether the break time was compensable time.

WHI explained that the investigation revealed the firm had violated Section 7(r) of the FLSA as they had failed to provide adequate space in accordance with the regulation. WHI stated it was determined that employees from all three hospitals had used spaces such as bathroom stalls and employee break rooms because they were unaware of any private spaces. WHI also stated that the tour of the establishment revealed the possible inconvenience of the two dedicated spaces if employees were working in different buildings.

WHI informed Mr. Marshall again that the regulation does not require permanent, dedicated spaces but instead suggested that if nursing mothers are located in a building that is not reasonably close to one of the permanent locations that the firm accommodates the employee by offering a temporary space in her building or in an adjacent building. Mr. Marshall stated the firm has already discussed the issue since the initial conference and will start to set up temporary spaces as necessary. In addition, Mr. Marshall stated that the firm plans to increase communication by adding the firm's policy regarding break time for nursing mothers into the employees "return to work" paperwork. Mr. Marshall said that all mothers returning from leave will receive this paperwork so they are aware the firm is willing to accommodate their needs should they choose to express breast milk at work. Mr. Marshall also added the firm is changing their campus maps in order to clearly illustrate where the nursing rooms are located. Mr. Marshall said the firm will make all efforts in order to comply.

Publications were reviewed and provided: Fact Sheets #73.

Recommendation:

It is recommended that this case be administratively closed.

Scottsdale Healthcare Hospital Case ID: 1618795

(b) (6), (b) (7)(C)

Investigator

07/25/11

Point of Contact: Mr. Jim Marshall: 480-323-4528

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1620621 Originating District: Phoenix District Office
Local Filing Number: 2011-279-07665 Investigating District: Phoenix District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 05/27/2011
Assignment Date: 06/01/2011

Employer Information

Trade Name: Pima County Jail Legal Name: Pima County Sheriff's Office
Address: 1270 W. Silverlake Road EIN: 86-6000543
County: Pima
NAICS Code: 922120
Tucson, AZ 85713 No. Of Employees: 150

Investigation Information

Period Investigated From: 03/27/2011 BNPI:
To: 07/26/2011 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Full Investigation Future Compliance Agreed: ☐
Compliance Status: Compliance (no violations found) Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
No Violation found for this act / Compliance (no violations found)					\$0.00	\$0.00	
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
No Coverage Under this Act / Compliance (no violations found)					\$0.00	\$0.00	
FLSNM Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FMLA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
No Violation found for this act / Compliance (no violations found)					\$0.00	\$0.00	
FMLA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

FMLA. (b) (7)(E) disciplined for using FMLA (b) (7)(E).

FLSNM. (b) (7)(E) not given appropriate place to express breast milk. EE not eligible for protection.

Recommend close, no findings.

WHI Signature: _____ Date: 07/26/2011

Reviewed By: _____ Date: _____

Pima County Jail Case ID: 1620621

Case ID: 1620621
Pima County Jail
1270 W. Silverlake Road
Tucson, Arizona 85713
Point of Contact: Kristin Jiroudek, HR Supervisor, FMLA
(520) 740-8076
EIN: 86-6000543

FMLA NARRATIVE

REASON FOR INVESTIGATION:

This investigation was initiated (b) (7)(E) (b) (6), (b) (7)(C)
(b) (7)(E) was being disciplined for an absence that was covered by
the FMLA. (b) (7)(E)

COVERAGE:

The subject entity is a public agency and is therefore covered under 29 CFR 825.108(d).

ELIGIBILITY:

(b) (6), (b) (7)(C) has worked for Pima County Sheriff's Office (b) (6), (b) (7)(C) worked in excess of 1250 hours in the 12 months prior to the need for leave. There are more than 50 employees within a 75 mile radius of her work site.

QUALIFYING CONDITION:

(b) (6), (b) (7)(C) requested and was approved for FML for the birth of (b) (6), (b) (7)(C) child.

EMPLOYEE NOTIFICATION:

The employer properly notified (b) (6), (b) (7)(C) of (b) (6), (b) (7)(E) eligibility for FML.

STATUS OF COMPLIANCE:

Prior History: There are several prior cases for Pima County:

FMLA - 6 prior cases affecting 1 employee and BW computed at \$35.59 (see case #'s 1046053, 1049061, 1141367, 1176371, 1310079, 1533910).

FLSA - 16 prior cases affecting a total of 371 employees and with BW computed at a total of \$708,678.00. (see case #'s 44613, 45019, 91758, 127889, 190553, 241172, 241208, 352504, 406376, 406473, 407066, 407100, 1042576, 1183629, 1508835, 1540324)

MODO: Phoenix DO is the MODO.

Status: (b) (6), (b) (7)(C), (b) (7)(E) employer was disciplining (b) (6), (b) (7)(E) for using approved FML time. According to (b) (6), (b) (7)(C) (b) (6), (b) (7)(E) had 9.47 hours of FML available when (b) (6), (b) (7)(E) arrived at work for a 10 hour shift. (b) (6), (b) (7)(E) informed (b) (6), (b) (7)(E) supervisor that (b) (6), (b) (7)(E) was going to work for 37 minutes and then leave because (b) (6), (b) (7)(E) newborn (b) (6), (b) (7)(E) was fussy and (b) (6), (b) (7)(E) wanted to use (b) (6), (b) (7)(E) FML time. Upon (b) (6), (b) (7)(E) return to work on (b) (6), (b) (7)(E) next regularly scheduled day, (b) (6), (b) (7)(E) was told that (b) (6), (b) (7)(E) was being disciplined because (b) (6), (b) (7)(E) had left work early. (b) (6), (b) (7)(E) employer advised (b) (6), (b) (7)(E) that since (b) (6), (b) (7)(E) had knowledge that (b) (6), (b) (7)(E) would be leaving early, (b) (6), (b) (7)(E) should have followed the policy relating to calling in one hour prior to duty for full day absences. This is contradictory because (b) (6), (b) (7)(E) did not miss a full day of work, so the "full day absence" policy would not be applicable. (b) (6), (b) (7)(E) employer held a "pre-action" conference in which they were considering suspending (b) (6), (b) (7)(E) for (b) (6), (b) (7)(E) absence. The decision for discipline was to be decided at a disciplinary hearing the second week of May. I instructed (b) (6), (b) (7)(C) to notify me as soon as the disciplinary hearing occurred and what the employer decides.

I have attempted to contact (b) (6), (b) (7)(C) several times since May to find out what the outcome of the hearing was, but (b) (6), (b) (7)(E) did not contact me. I sent a WH-41 on 07/06/2011 asking (b) (6), (b) (7)(E) to contact me by 07/18/2011. (b) (6), (b) (7)(E) did call and leave a message after hours on 07/14/2011, but did not leave any details about the hearing. I have attempted to contact (b) (6), (b) (7)(E) several more times but I have been unsuccessful.

Due to the lack of communication with (b) (6), (b) (7)(C), (b) (7)(E) of (b) (6), (b) (7)(E) being disciplined because of using FML is (b) (7)(E) There is no violation of the FMLA.

DISPOSITION:

Contact was not made with the employer as there were no violations of the FMLA. One of the several messages to (b) (6), (b) (7)(C) notified (b) (6), (b) (7)(C) of my findings.

RECOMMENDATIONS:

I recommend administrative closure (b) (7)(E).

(b) (6), (b) (7)(C), Wage Hour Technician
July 26, 2011

Pima County Jail
1270 W. Silverlake Road
Tucson, Arizona 85713
Point of Contact: Kristin Jiroudek, HR Supervisor, FMLA
(520) 740-8076
EIN: 86-6000543

PPACA NARRATIVE

REASON FOR INVESTIGATION:

This investigation was initiated (b) (7)(E) (b) (6), (b) (7)(C)
(b) (7)(E) was not given a proper area to express (b) (6), (b) (7)(E) milk. (b) (7)(E)

COVERAGE:

The subject entity is a public agency with more than 50 employees. They are required to provide reasonable break time and a place, other than a bathroom, that is shielded from view and free from intrusion from co-workers and the public, so that an employee may express (b) (6), (b) (7)(E) milk.

ELIGIBILITY:

(b) (6), (b) (7)(C) is not eligible for protection under the break time requirement for nursing mothers in the Patient Protection and Affordable Care Act because (b) (6), (b) (7)(E) is exempt under Section 7 of the FLSA.

Under the PPACA, only employees who are not exempt from section 7, which includes the FLSA's overtime pay requirements, are entitled to breaks to express milk.

Under Section 7(k) of the FLSA, there is an exemption from overtime for “any employee in fire protection activities or any employee in law enforcement activities **(including security personnel in correctional institutions)**” (emphasis added). As a “jailer” or “corrections officer” for the Pima County Sheriff's

Department's jail, (b) (6), (b) (7)(C) falls under this exemption.

STATUS OF COMPLIANCE:

Prior History: There are several prior cases for Pima County:

FMLA - 6 prior cases affecting 1 employee and BW computed at \$35.59 (see case #'s 1046053, 1049061, 1141367, 1176371, 1310079, 1533910).

FLSA - 16 prior cases affecting a total of 371 employees and with BW computed at a total of \$708,678.00. (see case #'s 44613, 45019, 91758, 127889, 190553, 241172, 241208, 352504, 406376, 406473, 407066, 407100, 1042576, 1183629, 1508835, 1540324)

MODO: Phoenix DO is the MODO.

Status: (b) (6), (b) (7)(C), (b) (7)(E), (b) (6), (b) (7)(C) employer did not provide a proper place for (b) (6), (b) (7)(C) to express (b) (6), (b) (7)(C) milk. According to (b) (6), (b) (7)(C), the employer allowed (b) (6), (b) (7)(C) to use one of the offices would qualify as "a place, other than a bathroom, that is shielded from view and free from intrusion from co-workers and the public, which may be used by an employee to express breast milk". However, (b) (6), (b) (7)(C) said that the office was dirtier than the women's bathroom and so (b) (6), (b) (7)(C) wanted to use the women's restroom but the employer would not let (b) (6), (b) (7)(C) reasoning was that the new regulations concerning Nursing Mothers did not prohibit (b) (6), (b) (7)(C) from using the women's restroom, it only prohibited the employer from requiring the employee to use the restroom to express milk. Indeed, Fact Sheet #73: Break Time for Nursing Mothers under the FLSA states:

"A bathroom, even if private, is not a permissible location under the Act."

(b) (7)(E) However, after researching the new regulations, I found that (b) (6), (b) (7)(C) did not qualify for the protection because (b) (6), (b) (7)(C) is exempt under Section 7 of the FLSA. The determination of whether there is a violation is a moot point because (b) (6), (b) (7)(C) does not qualify for the protection of the Act.

DISPOSITION:

I notified (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) did not qualify for the protections under the break time requirement for nursing mothers in the Patient Protection and Affordable Care Act because, as a corrections officer with the Pima County Sheriff's Office jail, (b) (6), (b) (7)(C) was exempt under Section 7(k) of the FLSA.

RECOMMENDATIONS:

I recommend administrative closure (b) (7)(E).

(b) (6), (b) (7)(C), Wage Hour Technician
July 26, 2011

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1621712 Originating District: Sacramento District Office
Local Filing Number: 2011-302-04476 Investigating District: Sacramento District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 06/09/2011
Assignment Date: 06/09/2011

Employer Information

Trade Name: California, State of Legal Name: Department of Corrections - Solano
Address: 2100 Peabody Rd EIN: EIN Missing
County: Solano
NAICS Code: 09110
Vacaville, CA95687 No. Of Employees: 3895

Investigation Information

Period Investigated From: 05/17/2011 BNPI:
To: 06/15/2011 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Full Investigation Future Compliance Agreed: ☐
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☒
Litigation: ☐ Other Action: ☒
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
No Violation found for this act / Compliance (no violations found)					\$0.00	\$0.00	
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
Failure to provide adequate space / Agree to Comply	1	0	\$0.00	\$0.00	\$0.00	\$0.00	
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

FLSANM (b) (7)(E) 3(s)(1)(C) covd ER - State Prison. (b) (7)(E) nursing 3 month old. 7(r)(1)(A) no viol. ER provides reas. break time. (b) (7)(E) works straight 8-hr shift, docked for lactation time. 7(r)(1)(B) viol. ER designated bathroom/locker room. 6/15/11 ER AGTFC. Designated 3 separate spaces throughout est. as lactation rooms, avail at different shifts. All shielded from view & free from intrusion. Procedures amended. Rec.-admin close. Pubs - FS 44, 73, HRG, 29 USC s. 207(r).

WHI Signature: _____ Date: 08/16/2011

Reviewed By: _____ Date: _____

2011-302-04476

California Department of Corrections and Rehabilitation
Dba California State Prison Solano
2100 Peabody Road
Vacaville, CA 95687

Correspondence to go to:

Nancy L. Hardy, Chief Deputy Warden
Office: (707) 454-3272
Blackberry: (707) 624-6351
Email: Nancy.Hardy@cdcr.ca.gov

FLSANM NARRATIVE

REASON FOR INVESTIGATION

This investigation was conducted (b) (7)(E) (b) (6), (b) (7)(C) under the Patient Protection and Affordable Care Act amendment to the FLSA (Break Time for Nursing Mothers). (b) (6), (b) (7)(C) (b) (7)(E) employer was preventing (b) (6), (b) (7)(C) from expressing breast milk when (b) (6), (b) (7)(C) needed to and that the designated place to express milk was a bathroom/locker room. (b) (7)(E) Although the employer had designated a bathroom/locker room as the lactation room, (b) (6), (b) (7)(C) actually expressed (b) (6), (b) (7)(C) milk in one of several offices as permitted by (b) (6), (b) (7)(C) employer's written policy. The employer allowed reasonable break time for (b) (6), (b) (7)(C) to express (b) (6), (b) (7)(C) milk. Because (b) (6), (b) (7)(C) worked a straight 8-hour shift with no designated break time, employer docked (b) (6), (b) (7)(C) for the time (b) (6), (b) (7)(C) actually spent expressing (b) (6), (b) (7)(C) milk but not for travel time to and from the place of lactation.

(b) (7)(E) by another Correctional Officer at the same facility who is currently nursing a (b) (6), (b) (7)(C) was informed of the outcome of this investigation, confirmed (b) (6), (b) (7)(C) access to the lactation rooms, and requested no further action be taken with regards to (b) (6), (b) (7)(C) (b) (7)(E) See Case ID #1625044.

COVERAGE

California State Prison Solano is a covered employer under section 3(s)(1)(C) of the FLSA as an agency of the State of California. (b) (6), (b) (7)(C) is specifically covered under the Break Time for Nursing Mothers provision of the FLSA because (b) (6), (b) (7)(C) is a nursing mother with a need to express milk for (b) (6), (b) (7)(C) child. See Ex. B-1-a and

C-1.

PERIOD OF INVESTIGATION

Period of investigation was limited to the time when (b) (6), (b) (7)(C) was covered under the Break Time for Nursing Mothers provision, beginning on the day (b) (6), (b) (7)(C) returned to work after giving birth (b) (6), (b) (7)(C) See Ex. B-1-a.

MODO

The Sacramento district office is the MODO. Employer's establishment is located in Vacaville, CA.

PRIOR HISTORY

Two prior FLSA cases at this facility involving unrecorded hours. See Case ID #10761 and #1400828. No prior cases at this facility or any other State prison involving the Break Time for Nursing Mothers provision of the FLSA.

EXEMPTIONS

Not applicable. (b) (6), (b) (7)(C) is a non-exempt employee paid on an hourly basis and is therefore subject to Section 7 of the FLSA and the protections of the Break Time for Nursing Mothers provision of the FLSA. See Ex. B-1-a and D-10-a through D-14-b.

STATUS OF COMPLIANCE

Section 7(r)(1)(A) – Reasonable Break Time

No violation. (b) (6), (b) (7)(C) works a straight 8-hour shift as a correctional officer and has no designated break time. However, (b) (6), (b) (7)(C) is able to express milk during (b) (6), (b) (7)(C) down time. See Ex. B-1-a, D-7-c through D-7-d, and D-8-a through D-8-d. Because the establishment is a prison facility, (b) (6), (b) (7)(C) spends significant amounts of time obtaining access and traveling to and from the lactation room. Employer policy only requires (b) (6), (b) (7)(C) to deduct the time (b) (6), (b) (7)(C) actually spends expressing milk, and not the travel time. See Ex. B-2 and D-16-b.

Section 7(r)(1)(B) – A Place, Other than a Bathroom, Shielded from View and Free from Intrusion

Violation. At the time (b) (7)(E), employer's designated lactation room was a bathroom/locker room in the Administration Building. The bathroom/locker room is located in what was formerly a gym but is currently office space. The room includes a sink, a bench, an enclosed toilet stall, three shower stalls, lockers, and an electrical outlet made accessible to nursing mothers using an extension cord. The bathroom/locker room has no windows and can be locked from the inside. See Ex. B-1-b, B-2, D-16-a, and E-1 through E-3. While the FLSA prohibits a covered employer from designating a bathroom as the lactation room, the employer's

policy in this case allowed the use of any available space, subject to supervisor approval. (b) (6), (b) (7)(C) had stopped using the designated lactation room prior to (b) (7)(E) and used available office space to express (b) (6), (b) (7)(C) milk. **See Ex. B-1-b, D-2-b, and D-16-b.**

DISPOSITION

On June 15, 2011, I met with the employer to tour the designated lactation room and discuss (b) (6), (b) (7)(C) (b) (7)(E), as well as what steps needed to be taken in order to come into compliance. Present on behalf of the employer were Acting Warden Nancy Hardy, Acting Chief Deputy Warden Robert W. Fox, and Acting Associate Warden Brian Coates. After we reviewed the statutory language and Fact Sheet #73, Warden Hardy agreed to take the following steps in order to come into compliance:

- 1) Evaluate the facility and identify a space, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, to be designated as the lactation room.
- 2) If the identified space is a temporary or converted space, ensure that the space is made available to the nursing mothers as needed to express their milk.
- 3) In order to provide flexibility, maintain current policy of allowing nursing mothers to use any other available space to express milk.
- 4) Where the nursing mother has no designated break time, dock only the time spent actually expressing milk, and not the time spent traveling to and from the place of lactation. **See Ex. B-2.**

On July 1, 2011, I returned to the establishment to view the spaces the employer was proposing to designate as lactation rooms. The spaces are located throughout the facility and available at various shifts to accommodate employees regardless of where and when they are assigned to work. None of the spaces are a bathroom or locker room, and all three are shielded from view and free from intrusion. **See Ex. E-8.** A key and "Do Not Disturb Sign" would be made available to nursing mothers needing to express milk. The spaces are as follows:

- 1) Level III Gym – Room next to Facility I Pill Distribution Window. This room is currently not being used. In order to avoid a hostage situation, the door can be locked with a key from the outside only. Employer agreed to clean the room, provide a table, chair, and access to an outlet, and to order window blinds and use butcher paper in the meantime. All steps have been taken and (b) (6), (b) (7)(C) has confirmed access to this space, which is available during Second and Third Watch, or from 6 AM to 10 PM. **See Ex. D-2-a and E-6.**

- 2) Level II Gym – Room #114. This is a storage room with one window and one door. Employer agreed to clean the room, provide a table, chair, and access to an outlet, remove paint and art supplies currently being stored in the room, and to order window blinds and use butcher paper in the meantime. All steps have been taken and (b) (6), (b) (7)(C) has confirmed access to this space, which is available during Second and Third Watch. The room also locks with a key from the outside only. **See Ex. D-2-b and E-4.**
- 3) Central Services – Dr. Boulian's Office. This space is an office currently in use. There is a desk, chair, dark tinted windows, access to an outlet, and door with a lock. The room is available between the hours of 5 PM and 6 AM. This room is immediately available for use and (b) (6), (b) (7)(C) has confirmed access. **See Ex. D-2-b and E-5.**

On August 8, 2011, Warden Hardy emailed me a signed copy of the updated Operational Procedure reflecting the designation of the above spaces as lactation rooms. **See Ex. D-2.**

RECOMMENDATIONS

(b) (7)(E) I recommend that this case be administratively closed.

(b) (6), (b) (7)(C) NOTIFICATION

On 8/8/11, I spoke with (b) (6), (b) (7)(C) regarding the status of the investigation and confirmed that the employer had taken all steps to come into compliance.

PUBLICATIONS

The following publications were discussed and provided on June 15, 2011: Handy Reference Guide, Fact Sheets # 44 and #73, and 29 U.S.C. § 207(r).

(b) (6), (b) (7)(C)

Wage & Hour Investigator

08/16/11

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1622079 Originating District: San Francisco District Office
Local Filing Number: 2011-316-06898 Investigating District: San Francisco District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 06/14/2011
Assignment Date: 06/14/2011

Employer Information

Trade Name: Target #1427 (Westgate Mall) Legal Name: Target Corporation
Address: 1600 Saratoga Avenue EIN: 41-0848441
County: Santa Clara
NAICS Code: 452112
San Jose, CA95129 No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 05/03/2011 BNPI:
To: 06/15/2011 Reinvestigation: ☒
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
No Violation found for this act / Compliance (no violations found)					\$0.00	\$0.00	
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
No Violation Found for this Act / Compliance (no violations found)					\$0.00	\$0.00	
FLSNM Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

Investig initiated (b) (6), (b) (7)(C) (b) (7)(E) ER failed to provide reasonable break time & adequate space to express breast milk under FLSNM. Enterp cov estab b/c ADV > \$500,000 & 50 EEs at Store. EE is hrly non-exempt & covered under Sec 7. Viols unable to be established b/c ER took action prior to WHD's contact. FC held w/Elizabeth Zweifel, HR, on 7/8/2011. ER agd to future compliance. Non-retaliation clause of FLSA disc w/both (b) (6) and ER. Rec case be closed administratively. (b) (7)(E)

WHI Signature: _____ Date: 07/19/2011

Reviewed By: _____ Date: _____

Target #1427
1600 Saratoga Avenue
San Jose, CA 95129
Phone: (408) 871-7984

Case# 1622079
EIN# 41-0848441

FLSA NARRATIVE

COVERAGE

Reason for the Investigation: The FLSA/FLSNM investigation was initiated because (b) (6), (b) (7)(C) (b) (7)(E) for (1) failure to provide a reasonable break time; and (2) failure to provide an adequate space. The investigation was limited to (b) (6), (b) (7)(C) (b) (7)(E) and Section 7(r) of the FLSA—Break Time for Nursing Mothers Provision of the FLSA. (b) (6), (b) (7)(C) gave (b) (7)(E) (b) (6), (b) (7)(E) with the employer.

Period of this Investigation: 05/03/11 through 06/15/11

MODO: The Minneapolis, MN District Office is the MODO because the corporate headquarters is located at 1000 Nicollet Mall, Minneapolis, MN 55403. The MODO was contacted in order to associate the case in Whisard and to obtain instructions as to how to proceed. (b) (7)(E)

(See Exhibit D-1-11 for MODO Contact.)

Prior History: A search of records indicates that the subject firm had been investigated previously. There were the following investigations: 1) Case ID# 1244001 (2003-316-01273): FLSA investigation with a Section 6 minimum wage violation with \$41.20 back wages found due and the employer agreed to comply and to pay; 2) Case ID#1391172 (2005-316-02627): CL investigation with no violations and the

employer agreed to future compliance; 3) Case ID# 1433642 (2006-316-03393): CL investigation with no violations and the employer agreed to future compliance; 4) Case ID# 1448009 (2006-316-03636): CL investigation with no violations and the employer agreed to future compliance; and 5) Case ID# 1450049 (2006-316-03662): FLSA (b) (7)(E) with \$86.60 in back wages found due and the employer agreed to comply and agreed to pay.

Nature of Business: The subject firm is Target Corporation. The corporate headquarters are located at 1000 Nicollet Mall, Minneapolis, MN 55403. Greg Steinhafel is the Chairman, President, and CEO. According to Target's website, its first store opened in 1962 in Roseville, MN. Currently, there are (b) (4) employees at Target #1427.

Section 3(s)(1)(A)(ii):

The approximate annual dollar volume for the Target #1427 is at least \$500,000 per year for each of the last three years. (See Exhibit C-1 for the Initial Conference.)

EXEMPTIONS

(b) (6), (b) (7)(C) is not exempt from the Section 7 overtime provisions of the FLSA; therefore, (b) (6), (b) (7)(C) is covered under the Nursing Mothers Provision under the FLSA. (b) (6), (b) (7)(C) is paid an hourly rate of (b) (6), (b) (7)(C) per hour as a Cashier.

STATUS OF COMPLIANCE

Investigative Result of (b) (6), (b) (7)(C) [(b) (7)(E)] (b) (6), (b) (7)(C) made the following (b) (7)(E) (1) failure to provide a reasonable break time; and (2) failure to provide an adequate space. The investigation was unable to establish a violation for either (b) (7)(E) because the employer took corrective action prior to WHD's making contact with it per the on-site visit on June 15, 2011.

Section 7(r)(1)(A): A Reasonable Break Time

There were no violations found for the investigation under Section 7(r)(1)(A) of the FLSA. (b) (6), (b) (7)(E) returned to work after having a baby (b) (6), (b) (7)(C) return to work date (b) (6), (b) (7)(C), but (b) (6), (b) (7)(E) believes that (b) (6), (b) (7)(C) was scheduled to work around (b) (6), (b) (7)(C). When (b) (6), (b) (7)(E) returned to work, (b) (6), (b) (7)(E) informed, Elizabeth Zweifel, Executive Team Leader (ETL) Human Resources, for the Target Store that (b) (6), (b) (7)(E) would need to breast pump at work. (b) (6), (b) (7)(E) was asked if (b) (6), (b) (7)(E) could breast pump before or after work or they may consider cutting (b) (6), (b) (7)(E) hours. (b) (6), (b) (7)(C) maintains that (b) (6), (b) (7)(E) asserted (b) (6), (b) (7)(E) rights that the employer is required legally to provide time and space to express (b) (6), (b) (7)(E) breast milk. When (b) (6), (b) (7)(E) stated this, Ms. Zweifel commented (b) (7)(E) that it was an 'inconvenience' and it would be offered as a 'trial run.' (b) (6), (b) (7)(C) (b) (7)(E) the employer only wanted to allow 15 minutes to pump; however, (b) (6), (b) (7)(E) negotiated 20 minutes even though (b) (6), (b) (7)(E) stated (b) (6), (b) (7)(E) needed 15 minutes to pump and 5 to 10 minutes to set-up/clean-up. Ideally, (b) (6), (b) (7)(E) needs at least 25 to 30 minutes. The employer only afforded 20 minutes. The first 15 minutes is paid time via her 15 minute break. (b) (6), (b) (7)(E) was unclear how the additional 5 minutes would be treated. (b) (6), (b) (7)(E) also has been called to the floor before the 20 minutes for expressing breast milk is completed. There will be a knock at the door and she must stop expressing (b) (6), (b) (7)(E) milk and go to the floor.

When WHI (b) (6), (b) (7)(C) met with Ms. Zweifel on June 15, 2011 for the on-site visit, she stated that (b) (6), (b) (7)(E) indicated (b) (6), (b) (7)(E) needed about 20 to 25 minutes to express (b) (6), (b) (7)(E) milk. Ms. Zweifel said that on June 13, 2011 (b) (6), (b) (7)(C) brought it to her attention that (b) (6), (b) (7)(E) was being called to the floor to perform job duties before (b) (6), (b) (7)(E) had completed expressing (b) (6), (b) (7)(E) breast milk. Ms. Zweifel said she was "unaware that this had been occurring" and told (b) (6), (b) (7)(C) "to take whatever time was needed." She sent an e-mail to the Executive team and clerical team that night, stating that (b) (6), (b) (7)(C) was not to be "disturbed prior to completing the expressing of (b) (6), (b) (7)(E) [breast] milk." (b) (6), (b) (7)(C) and (b) (6), (b) (7)(E) agreed that (b) (6), (b) (7)(E) could take whatever time is necessary to express (b) (6), (b) (7)(E) breast milk even if it exceeds the 20 to 25 minutes, which was requested initially. She also informed the supervisors that (b) (6), (b) (7)(C) will report to the floor when (b) (6), (b) (7)(E) is done with expressing (b) (6), (b) (7)(E) breast milk. All of the time for expressing breast milk is paid. Ms. Zweifel provided the e-mail she sent on June 13, 2011 after (b) (6), (b) (7)(C) and she spoke. (See Exhibit C-1 for the Initial Conference.)

Section 7(r)(1)(B): A Place Shielded from View and Free from Intrusion

(b) (6), (b) (7)(C) (b) (7)(E) no room was offered for (b) (6), (b) (7)(C) to express breast milk until (b) (6), (b) (7)(C) requested such. Per this discussion, Ms. Zweifel offered a small office, which is attached to the Secretary's office. There is a door between the two rooms (closes and locks), thereby offering (b) (6), (b) (7)(C) privacy. The room used by (b) (6), (b) (7)(C) has a desk with two chairs, a paper shredder, and three computers. (b) (6), (b) (7)(C) maintains that the room is private; however, it is not free from intrusion. Specifically, (b) (6), (b) (7)(C) alleges that if another employee needs to use the room before (b) (6), (b) (7)(C) 20 minutes for expressing (b) (6), (b) (7)(C) breast milk is done, then (b) (6), (b) (7)(C) needs to stop (b) (6), (b) (7)(C) pumping and leave the room. (b) (6), (b) (7)(C) has called the Store prior to (b) (6), (b) (7)(C) shift to alert them about needing to use the room; the LOD (serves as a manager) has told (b) (6), (b) (7)(C) allegedly that (b) (6), (b) (7)(C) will need to pump beforehand because the room is not available. Furthermore, (b) (6), (b) (7)(C) has had to wait to use the room until it is available.

Ms. Zweifel stated that (b) (6), (b) (7)(C) informed her on June 13, 2011 that (b) (6), (b) (7)(C) was being disturbed by other employees before (b) (6), (b) (7)(C) had completed expressing (b) (6), (b) (7)(C) breast milk. She sent an e-mail dated June 13, 2011 at 9:20 p.m. to the Executive Team and Clerical Team that (b) (6), (b) (7)(C) needs "to be allowed to pump" and will pump in the "back office of clerical." The e-mail stated the following: (1) (b) (6), (b) (7)(C) should not be disturbed while pumping; and (2) if (b) (6), (b) (7)(C) is using the back room, then the other employees should be informed that it is unavailable. Ms. Zweifel said she originally offered the use of the room in the back clerical office or anywhere that (b) (6), (b) (7)(C) felt comfortable, such as the front office. The office behind the clerical office has no windows, and the door between the clerical office and this office locks. (b) (6), (b) (7)(C) has access to it (b) (6), (b) (7)(C). (See Exhibit C-1 for the Initial Conference.)

WHI (b) (6), (b) (7)(C) toured the establishment and observed the room for expressing milk. It was private and the door locked between the offices. (See Exhibit D- 2 for a Sketch of the Room used for Expressing Breast Milk.) WHI (b) (6), (b) (7)(C) inquired about (b) (6), (b) (7)(C) having access to the room if the door to the clerical office is locked. Ms. Zweifel stated that the clerical office is always staffed so (b) (6), (b) (7)(C) has access to the room and does not need an Executive to access it.

Section 12: Child Labor

No violations were found. The Initial Conference verified that there was one 16-year-old minor employed at Target Store #1427 as a Cashier.

DISPOSITION

The Final Conference was held with Elizabeth Zweifel, Executive Team Leader Human Resources, and Jennifer Kihnley, Wage and Hour Investigator (WHI) on July 8, 2011 at 1 p.m. WHI (b) (6), (b) (7)(C) explained to Ms. Zweifel that the investigation was limited to (b) (6), (b) (7)(C) (b) (7)(E) under the FLSNM for (1) failure to provide a reasonable break time; and (2) failure to provide an adequate space. Based on the information obtained from the investigation, the investigation was unable to establish a violation for either (b) (7)(E). This determination was made because the employer provided documentation that when (b) (6), (b) (7)(C) discussed (b) (7)(E) with Ms. Zweifel on June 13, 2011, immediate action was taken on that day after their discussion; this corrective action occurred prior to WHD's contacting the employer. Specifically, as far as the reasonable break time for expressing breast milk, (b) (6), (b) (7)(C) can take whatever time is necessary to express (b) (6), (b) (7)(C) breast milk even if it exceeds the 20 to 25 minutes. Furthermore, the supervisors were informed that (b) (6), (b) (7)(C) will report to the floor when (b) (6), (b) (7)(C) is done with expressing (b) (6), (b) (7)(C) breast milk. In terms of providing an adequate space, Ms. Zweifel informed the Executive team and Clerical team that (b) (6), (b) (7)(C) should not be disturbed while pumping. In addition, if (b) (6), (b) (7)(C) is using the back room, then the other employees should be informed that it is unavailable.

WHI (b) (6), (b) (7)(C) reviewed the information discussed during the on-site. First, Fact Sheet #73 was provided to the employer for review. Second, the employer was informed about FLSA's anti-retaliation provisions under Section 15(a)(3). Lastly, the employer was advised that it needs to comply with the strictest standard at the California state level or federal law. There may be applicable California law regarding the expressing of breast milk at work.

WHI (b) (6), (b) (7)(C) advised the employer that there are (1) hours-time standards for 14- and 15 year-olds; and (2) 17 Hazardous Occupations Orders in which 16- and 17-year-olds are prohibited from employment. Ms. Zweifel agreed to comply with the child labor provisions.

(b) (6), (b) (7)(C) was contacted on June 16, 2011 via phone to inform (b) (6), (b) (7)(C) about the investigation's findings. WHI (b) (6), (b) (7)(C) informed (b) (6), (b) (7)(C) that the investigation was unable to establish that there were violations because the employer took corrective action prior to WHD's contact with it. (b) (6), (b) (7)(C) was advised about the non-retaliation provisions of Section 15(a)(3) of the FLSA.

Ms. Zweifel stated that the employer agrees to future compliance.

Publications Provided: WH Publication 1282 Revised July 2007; Fact Sheet 73

Recommendation: The case should be closed administratively with no further action taken. The employer took corrective action prior to WHD's making contact with it per the on-site visit on June 15, 2011. The employer committed to future compliance.

Prepared and submitted by:

(b) (6), (b) (7)(C)

Wage and Hour Investigator
July 19, 2011

WHISARD Compliance Action Report

U.S. Department of Labor Wage and Hour Division

Case ID: 1622572 Originating District: San Diego District Office
Local Filing Number: 2011-315-04125 Investigating District: San Diego District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 06/20/2011
Assignment Date: 06/20/2011

Employer Information

Trade Name: McDonald's #4698 Legal Name: Mestas Family Corporation/Mestas
Address: 26605 Kelvin Court, Suite A EIN: 56-2306767
Murrieta, CA92562 County: Riverside
NAICS Code: 722110
No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 05/01/2011 BNPI:
To: 05/31/2011 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Full Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
No Violation found for this act / Compliance (no violations found)					\$0.00	\$0.00	
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

FLSA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
No Violation found for this act / Not Applicable					\$0.00	\$0.00	
FLSA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
Failure to provide reasonable break time / Agree to Comply	1	0	\$0.00	\$0.00	\$0.00	\$0.00	
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

FMLA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
No Violation found for this act / Compliance (no violations found)					\$0.00	\$0.00	
FMLA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

WHISARD Compliance Action Report

Conclusions & Recommendations:

TOTAL HOURS: 11.25. FLSA Nursing Mother Complaint; (b) (6), (b) (7)(C) alleged (b) (6), (b) (7)(C) was given insufficient break time to express breast milk and was denied one or two break requests in May of 2011. ER alleged he was unaware of the problem & stated (b) (6), (b) (7)(C) was given 3 paid 10-min breaks & 30-min meal period each workday. Advised ER break is unpaid but must not be limited in duration. ER ATC. Rec case be administratively closed with no further action.

WHI Signature: _____ Date: 07/15/2011

Reviewed By: _____ Date: _____

MESTAS FAMILY CORPORATION
dba MCDONALD'S
1622572
26605 Kelvin Court, Suite A
Murrieta, CA 92562
Telephone No.: 951-698-1245
Facsimile No.: 951-698-0427
EIN: 56-2306767

2011-315-04125
WHISARD ID:

FLSA NARRATIVE REPORT

COVERAGE:

Mestas Family Corporation was incorporated in the State of California on or about November 5, 2002. (See Exhibits C-1, C-2 and C-3.) Alex Mestas is the President of the Firm. (See Exhibit C-2.) The Firm's main office and headquarters are located at 26605 Kelvin Court, Suite A, Murrieta, CA 92562, (951) 698-1245. (See Exhibits C-1 and C-2.) The Firm owns and operates four (4) McDonald's franchise restaurants in southern California and employs a total of approximately (b) (4) employees at these locations. (See Exhibit C-2.) Approximately (b) (4) of these employees work at McDonald's restaurant #4698, the subject Firm, located at 28000 Bradley Road, Sun City, CA 92586, (951) 301-3853. (See Exhibit E-1.) The Firm's other franchise restaurants include: McDonald's Lake Elsinore Wal-Mart, 31700 Grape Street, Lake Elsinore, CA 92530; McDonald's Lake Elsinore, 31650 Mission Trail, Lake Elsinore, CA 92530; and McDonald's Central Lake Elsinore, 18283 Collier Avenue, Lake Elsinore, CA 92530. (See Exhibit C-5). Mr. Mestas stipulated that the Firm had an annual dollar volume in excess of \$500,000 in 2010, 2009 and 2008 and that the Firm employs two or more employees who, on a regular and recurring basis each workweek, handle credit card transactions. (See Exhibit C-2.) The Firm meets the requirements for enterprise coverage under Section 3(s)(1)(A) of the Fair Labor Standards Act ("FLSA").

A Request for MODO Control Record was made on July 15, 2011. (See Exhibit D-1.) The San Diego District Office is the MODO and the MODO manager is District Director Kenneth Morrison.

This investigation was limited to (b) (6), (b) (7)(C), (b) (7)(E) the Firm failed to provide (b) (6), (b) (7)(C) with sufficient break time to express breast milk for (b) (6), (b) (7)(C) nursing child on two (2) occasions in May of 2011. The investigation period is May 1, 2011 through May 31, 2011.

EXEMPTIONS:

No determination was made with respect to the exempt status of any of the Firm's employees.

STATUS OF COMPLIANCE:

This investigation was initiated (b) (7)(E) the McDonald's restaurant located at 28000 Bradley Road, Sun City, CA 92585 failed to provide sufficient break time for one of its employees who is a nursing mother. (b) (6), (b) (7)(C) (b) (7)(E) WHI (b) (6), (b) (7)(C) conducted (b) (7)(E) of the matter and obtained a written statement of the Firm's commitment to future compliance with Section 7(r) of the FLSA. (See Exhibit D-4.)

PRIOR HISTORY:

A review of the WHISARD system revealed no prior investigations of the subject Firm. (See Exhibit D-2.)

SECTION 6: No determination was made with respect to the Firm's status of compliance with this Section of the FLSA.

SECTION 7: Violation of this Section was found during the investigation period. (b) (6), (b) (7)(C) (b) (7)(E) was provided with insufficient break time to express breast milk at work and that in response to (b) (6), (b) (7)(C) requests for a break for this purpose, (b) (6), (b) (7)(C) immediate supervisor informed (b) (6), (b) (7)(C) could take a break only if the restaurant was not busy. (See Exhibit B-1.) The Firm's owner, Mr. Mestas, stated that he was "surprised" (b) (7)(E); it was his understanding that (b) (6), (b) (7)(C) received sufficient break time for lactation. (See Exhibit E-1.) Mr. Mestas contacted (b) (6), (b) (7)(C) immediate supervisor, (b) (6), (b) (7)(C), who informed him that (b) (6), (b) (7)(C) was permitted to take three paid 10-minute breaks and also an unpaid ½ hour lunch break. (See Exhibit E-1.) Accordingly, because (b) (6), (b) (7)(C) was not afforded unpaid breaks of unlimited duration, the Firm violated Section 7(r) of the FLSA.

SECTION 11: No determination was made with respect to the Firm's status of compliance with this Section.

SECTION 12: No violation of this Section was found during the investigation. The Firm currently employs eight (8) individuals under the age of 18. (See Exhibits C-2, C-5 and D-5.) No interviews were conducted of the minors. However, the Firm's owner stipulated that the minors work part time and are only permitted to work as cashiers, wipe down counters, and perform light sweeping and mopping. The Firm produced a California State Department of Education Permit to Employ and Work for each of the minors currently employed by the Firm, demonstrating each minor to be of legal age for the occupation in which he/she was employed. (See Exhibit D-5.) Additionally, the Firm provided a copy of its policy with respect to permissible activities of minors employed by the Firm. (See Exhibit D-5.)

DISPOSITION:

On June 23, 2011, WHI (b) (6), (b) (7)(C) held a telephone conference with Alex Mestas, the Firm's owner. (See Exhibit E-1.) Mr. Mestas stated his commitment to complying with the provisions of the FLSA and described the breaks that were afforded to (b) (6), (b) (7)(C) (i.e., three (3) paid 10-minute breaks and an unpaid ½ hour lunch break). (See Exhibit E-1.) WHI (b) (6), (b) (7)(C) reviewed the provisions of the FLSA with respect to nursing mothers and informed Mr. Mestas that while the break need not be paid, (b) (6), (b) (7)(C) is entitled to as much time as (b) (6), (b) (7)(C) needs for the purpose of lactation. (See Exhibit E-1.) WHI (b) (6), (b) (7)(C) advised Mr. Mestas that the Firm cannot limit these unpaid breaks to 10 minutes or ½ hour, etc. Mr. Mestas indicated he understood the requirements of the FLSA and agreed to provide WHI (b) (6), (b) (7)(C) a written statement of compliance. (See Exhibit E-1.) WHI (b) (6), (b) (7)(C) received the Firm's statement of compliance on June 27, 2011. (See Exhibit D-4.) WHI (b) (6), (b) (7)(C) further corresponded with Mr. Mestas on July 6, 2011, regarding, among other things, the Firm's employment of minors. (See Exhibit D-3.) Mr. Mestas provided a written response to WHI (b) (6), (b) (7)(C) inquiry on July 10, 2011, and likewise participated in a conference call with WHI (b) (6), (b) (7)(C) on July 13, 2011 regarding permissible occupations for employees under the age of 18. (See Exhibits C-2 and E-1.) Mr. Mestas indicated that he was familiar with the requirements of the FLSA, the work restrictions related to the employment of minors, and agreed to maintain compliance with these provisions. (See Exhibit E-1.)

(b) (6), (b) (7)(C) was informed of the outcome of the investigation on June 23, 2011. (See Exhibit E-1.) WHI (b) (6), (b) (7)(C) left a voicemail message informing (b) (6), (b) (7)(C) that the issue was resolved, (b) (6), (b) (7)(C) was entitled to take as much time as necessary for unpaid lactation breaks and needed only to inform (b) (6), (b) (7)(C) supervisor when (b) (6), (b) (7)(C) intended to take such breaks (as opposed to request permission from (b) (6), (b) (7)(C) supervisor or wait until the restaurant was not busy). (b) (6), (b) (7)(C) did not respond to WHI (b) (6), (b) (7)(C).

(b) (6), (b) (7)(C) message. WHI (b) (6), (b) (7)(C) contacted (b) (6), (b) (7)(C) again on July 13, 2011. (b) (6), (b) (7)(C) informed WHI (b) (6), (b) (7)(C) at that time that (b) (6), (b) (7)(C) had decided not to return to work at the Firm and had recently tendered (b) (6), (b) (7)(C) resignation. (See Exhibit E-1.)

On July 15, 2011, WHI (b) (6), (b) (7)(C) advised Mr. Mestas that the investigation was concluded and mailed the following publications to the corporate office: WH Publication 1282 (HRG); Fact Sheet #2A Child Labor Rules for Employing Youth in Restaurants; and Fact Sheet #73 Break Time for Nursing Mothers Under the FLSA.

RECOMMENDATIONS:

The Firm is currently in compliance with the provisions of the FLSA and has agreed to maintain future compliance. WHI (b) (6), (b) (7)(C) recommends the case be administratively closed with no further action.

(b) (6), (b) (7)(C)

Wage & Hour Investigator

July 15, 2011

WHISARD Compliance Action Report

U.S. Department of Labor Wage and Hour Division

Case ID: 1641344 Originating District: Sacramento District Office
Local Filing Number: 2012-302-04759 Investigating District: Sacramento District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 01/04/2012
Assignment Date: 01/04/2012

Employer Information

Trade Name: Loyd's Liberty Homes, Inc. Legal Name: The Mentor Network
Address: 775 Columbia Ave EIN: 04-2893910
3567 San Jose Ave. County: Merced
1503 W. Main St, Merced, CA 95340 NAICS Code: 623990
Merced, CA 95340 No. Of Employees: (b) (7)(C)

Investigation Information

Period Investigated From: 12/25/2011 BNPI:
To: 01/14/2012 Reinvestigation: ☒
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

Nursing Mother (b) (7)(E). COV:3(s)(1)(B) engage in care of aged&disabled. MODO:Boston. PriorHistory. EX:None. STAT OF COMPL:Section 7(r)(1)(A) ER faild provide (b) (6), (b) (7)(C) w/reasonable breaks to express breast milk for (b) (6), (b) (7)(C) nursing child (b) (6), (b) (7)(C). FC:1/6/12 w/Program Director, Natasha Cunninham &Regional Director, Maggie Solis. ER ATC -will allow to express every 2 hrs as requested by (b) (6), (b) (7)(C) & requested by (b) (6), (b) (7)(C) Dr. Pubs: Fact Sheet #73, FLSA HRG, WH-1318, WH-1281, WH-1261,WH-1262 . Rec notify MODO &admin close

WHI Signature: _____ Date: 01/12/2012

Reviewed By: _____ Date: _____

Case ID: 1641344

Local Filing No: 2012-302-04759

The Mentor Network

dba **Loyd's Liberty Homes, Inc.**

Residential home: 775 Columbia Ave, Merced, CA 95340

Residential home: 3567 San Jose St., Merced, CA 95340

Office: 1503 W. Main St., Merced, CA 95340

(209) 725-7997 office

(209) 201-5248 cell

FEIN: 04-2893910

FLSANM Narrative

Future correspondence to: Natasha Cunningham at 1503 W. Main St., Merced, CA 95340

Reason for investigation:

This investigation was conducted (b) (7)(E) (b) (6), (b) (7)(E) employer was violating the Patient Protection and Affordable Act amendment to the FLSA (break time for nursing mothers). (b) (6), (b) (7)(E) works at a residential home for the developmentally disabled and (b) (7)(E) (b) (6), (b) (7)(C) employer did not allow (b) (6), (b) (7)(C) to take reasonable breaks to express breast milk. (b) (6), (b) (7)(C) is a nursing mother (b) (6), (b) (7)(C) and requested to express milk every 2 hours. (b) (7)(E)

COVERAGE

The Mentor Network is an organization that began doing business in 1980 and provides a variety of human services to a variety of people throughout the country (see ER information, exhibit C-3-a). The home office is located at 313 Congress St., Boston, MA 02210. It provides programs and residential group facilities that support individuals with developmental disabilities and children with acute medical needs. Additionally, it provides nonresidential services, such as in-home support and supported employment among offering other human services. The firm employs (b) (4) employees in the state of California alone (see WHI notes, exhibit E-2). A subsidiary of The Mentor Network is Loyd's Liberty Homes, Inc. which is licensed to operate residential homes for the developmentally disabled (see ER interview, exhibit B-2 and business entity information, exhibit C-2). (b) (6), (b) (7)(C) (nursing mother) in this case is an employee at a Loyd's Liberty Homes, Inc. residential facility.

All the employees of the residential homes are covered under Section 3(s)(1)(B) of the Act. The employer is engaged in the operation of an institution primarily engaged in the care of the sick, the aged or the mentally ill or defective who reside on the premises of such institution (see ER interview, exhibit C-1-a).

(b) (6), (b) (7)(C) is covered under the Break Time for Nursing Mothers provision of the FLSA as (b) (6), (b) (7)(C) is a nursing mother (b) (6), (b) (7)(C) and has a need to express breast milk while at work. See the nursing mother's interview, exhibit B-3-b.

Period of Investigation: The period of investigation was limited to the workweek when the employee (b) (6), (b) (7)(C) returned to work after giving birth to (b) (6), (b) (7)(C) child up to the workweek of the employer's site inspection: 12/25/11 to 1/14/12. The investigation was limited to (b) (6), (b) (7)(C) only.

MODO: The Boston, MA District Office is the MODO for this employer. The main office is located at 313 Congress St., Boston, MA (see MODO Communication, exhibit D-1-a).

EXEMPTIONS

No exemption is applicable. The employee performs non-exempt duties and is paid hourly. (b) (6), (b) (7)(C) is a Direct Support Professional whose primary duties consist of cooking and cleaning for the clients and assisting them with their bathing, dressing, doctor's appointments and recreational activities. Additionally, (b) (6), (b) (7)(C) is paid an hourly rate of (b) (6), (b) (7)(C) per hour (see ER interview, exhibit B-2 and (b) (6), (b) (7)(C) interview, exhibit B-3-a)

STATUS OF COMPLIANCE

Prior History:

2011. Case ID 1638805. FMLA. Full Investigation. Violations unclear in WHISARD Case Summary Report (see exhibit D-9)

2010. Case ID 1601549. FLSA. (b) (7)(E) Viol: one EE due \$166.95 in BW. (See WHISARD Case Summary Report, exhibit D-10)

2010. Case ID 1565076. FMLA. Limited Investigation. No violation. (See WHISARD Case Summary Report, exhibit D-11)

2008. Case ID 1530957. FLSA. Full Investigation. Viol: Recordkeeping. (See WHISARD Case Summary Report, exhibit D-12)

2006. Case ID 1463463. SMWPW. Self-Audit. Viol: Self audit resulting from application review, BW of \$34.09. (See WHISARD Case Summary Report, exhibit D-13)

2006. Case ID 1461999. FLSA. (b) (7)(E) Viol: OT BWs \$205.12 (See WHISARD Case Summary Report, exhibit D-14)

2005. Case ID 1425098. FLSA. Self-Audit. Viol: One EE due OT BWs \$2,161.25. (See WHISARD Case Summary Report, exhibit D-15)

2004. Case ID 1373191. FLSA. (b) (7)(E) Viol: BW \$412 due one EE. (See WHISARD Case Summary Report, exhibit D-16)

2004. Case ID 1370260. FLSA. (b) (7)(E) Viol: BW \$769.62 due one EE. (See WHISARD Case Summary Report, exhibit D-17)

2004. Case ID 1356317. FMLA. Limited Investigation. No violation. (See WHISARD Case Summary Report, exhibit D-18)

2001. Case ID 1177470. FLSA. Full investigation. Viol: OT BWs \$1925.40 due to 16 EEs. (See WHISARD Case Summary Report, exhibit D-19)

2001. Case ID 1176558. FLSA. (b) (7)(E) Viol: MW BWs \$51.50 due to one EE. (See WHISARD Case Summary Report, exhibit D-20)

Section 7(r)(1)(A) Reasonable Break Time

The ER failed to provide the employee reasonable breaks to express breast milk for (b) (6), (b) (7)(C) [REDACTED]. The employee obtained a doctor's note stating that (b) (6), (b) (7)(C) [REDACTED] needed to express milk every 2 hours and provided this note to (b) (6), (b) (7)(C) [REDACTED] ER. On December 29, 2011, the employee reported back to work after giving birth to (b) (6), (b) (7)(C) [REDACTED] baby, 2 months earlier. On this day (b) (6), (b) (7)(C) [REDACTED] was only allowed to pump every 4 hours (see WHI notes, exhibit E-1). On December 30, 2011 when the employee reported to work for the second day, the employee's direct supervisor, (b) (6), (b) (7)(C) [REDACTED] told the employee that (b) (6), (b) (7)(C) [REDACTED] needed to go home because they could not accommodate (b) (6), (b) (7)(C) [REDACTED] to pump milk every 2 hours (See employee interview, exhibit B-3-b). Furthermore, the supervisor stated that the company policy only allowed (b) (6), (b) (7)(C) [REDACTED] to pump milk every 4 hours for 15 minutes (See employee interview, exhibit B-3-b). This information was confirmed through

the Program Director, Natasha Cunningham. She stated that they (ER) could not accommodate the employee's need of pumping breast milk every 2 hours because the staff-to-client ratio would not be met and it would not allow adequate supervision to the clients (See ER interview, exhibit B-1-b). She added that they informed the employee that they could only allow (b) (6), (b) (7)(C) to pump every 4 hours, but not every 2 hours, because of the nature of the work that they do (see ER interview, exhibit B-1-b).

Section 7(r)(1)(B) A place, other than a bathroom, that is shielded from view and free from intrusion
No violation. The employee returned to work (b) (6), (b) (7)(C) was allowed to use an office space in the garage of the residential home where (b) (6), (b) (7)(C) worked. The place was shielded from view and was free from intrusion. The residential home is located at 775 Columbia Ave, Merced, CA 95340. After that, (b) (6), (b) (7)(C) was moved to work at a different residential facility located on 3567 San Jose St., Merced CA to better accommodate (b) (6), (b) (7)(C) with privacy. A visit was made by WHI (b) (6), (b) (7)(C) on 01/10/12 to this facility and it was observed that the designated lactation room was an office which was shielded from view and free from intrusion (see picture, exhibit D-5). The room had a latch to allow the employee to lock the door from the inside while (b) (6), (b) (7)(C) is using the room to express milk (see picture, exhibit D-7). The room also has a window covering to block out the window's air conditioning unit in order to shield (b) (6), (b) (7)(C) from view (see picture, exhibit D-6).

DISPOSITION

On January 6, 2012 a final conference was held with Program Director, Natasha Cunningham and Regional Director, Maggie Solis, at The Mentor Network office on 1503 W. Main St., in Merced, CA. WHI (b) (6), (b) (7)(C) informed Ms. Cunningham and Ms. Solis that the ER is subject to the law and that the Patient Protection and Affordable Care Act provides certain protections to nursing mothers who are not exempt from overtime. Among those protections are:

- 1) to provide reasonable break time to express breast milk each time an employee has the need to express milk for (b) (6), (b) (7)(C) nursing child for 1 year after the child's birth and
- 2) provide a private space for expressing breast milk which is shielded from view and free from any intrusion from co-workers and the public and which is not a bathroom.

They were also informed that ERs are not required to compensate the employee for these breaks except when the employee expresses milk during the normally scheduled paid breaks given to employees.

Ms. Solis agreed that they are going to allow the employee to pump every 2 hours (which is what the employee has requested as well as her doctor). See exhibit B-1-b. She also stated that when the

employee returns to work they were going to have (b) (6), (b) (7)(C) pump in the home's bathroom for privacy. WHI (b) (6), (b) (7)(C) referred Ms. Solis to Fact Sheet #73 (Break Time for Nursing Mothers) and reiterated to Ms. Solis that a bathroom is not acceptable. She stated that in order to provide (b) (6), (b) (7)(C) with more privacy they will move (b) (6), (b) (7)(C) to work at a residential home which has an indoor office. This residential facility is located at 3567 San Jose St., Merced CA. The office will have a deadbolt so that the employee may lock it from the inside for privacy. (see exhibit, B-1-c) This site was visited by WHI (b) (6), (b) (7)(C) and it was found to be in compliance with the FLSANM requirements. See pictures of lactation room, exhibits D-5 to D-7. Finally, the ER stated that they will compensate the employee for the time when the employee expresses milk during (b) (6), (b) (7)(C) normally scheduled breaks but will have the employee clock out and will not compensate when (b) (6), (b) (7)(C) expresses milk at any other times. The employer agreed to be in compliance with the nursing mother's provisions of the FLSA.

(b) (6), (b) (7)(C) Notification:

On 01/09/11, (b) (6), (b) (7)(C) was notified of the outcome of the investigation. (b) (6), (b) (7)(C) confirmed that (b) (6), (b) (7)(C) ER is now accommodating (b) (6), (b) (7)(C) expressing schedule and that (b) (6), (b) (7)(C) is doing this in a private office space at the residential home located at 3567 San Jose St., Merced, CA 95340.

Recommendations

(b) (7)(E) this case be administratively closed.

Publications:

Fact Sheet #73 Break Time for Nursing Mothers, FLSA HRG, WH-1318 FLSA, WH-1281 541 Exemptions, WH-1261 RK, WH-1262 OT Regs.

(b) (6), (b) (7)(C)

Wage & Hour Investigator
01/12/12

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1665884 Originating District: Seattle District Office
Local Filing Number: 2012-323-06348 Investigating District: Seattle District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 08/15/2012
Assignment Date: 08/15/2012

Employer Information

Trade Name: Puget Sound Health Care Center Legal Name: Extendicare Health Services Inc.
Address: 4001 Capitol Mall Drive SW EIN: 39-1441287
County: Thurston
NAICS Code: 623110
Olympia, WA98502 No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 08/04/2012 BNPI:
To: 09/12/2012 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

(b) (7)(E) not provided place to express breast milk. 3(s)(1)(A) cov., (b) is eligible. 7(r) viol. found. (b) was not provided space free from intrusion. Contacted firm on 08/30/12. Kasey Kemmet, Administrator of firm ATC Immed. by providing a room shielded from view & free from intrusion & training to all staff. Obtained compliance confirmation from (b) on 09/12/11. Rec. case by administratively closed.

WHI Signature: _____ Date: 09/13/2012

Reviewed By: _____ Date: _____

Puget Sound Healthcare
dba / Puget Sound Health Care Center
4001 Capitol Mall Drive SW
Olympia, WA 98502

EIN: 39-441287

FLSNM Narrative Report

Coverage:

The subject employer, Extendicare Health Services, Inc. is an indirect, wholly subsidiary to Extendicare. It operates 179 nursing center, assisted living and retirement centers, rehabilitation hospital / chronic care unit in the United States and 84 facilities in Canada.

All employees (EEs) of the establishment were covered on an enterprise basis under Sec 3(s)(1) during the entire investigation period. All EEs are covered under FLSA since the establishment is a nursing care enterprise.

Extendicare Health Services, Inc. was founded in 1968 and subject firm was incorporated in Washington state and located and operate one single establishment in Olympia, WA. It has been in operation since 1968 (See Exhibit C-1).

This investigation focused on one of the senior care facility, Puget Sound Health Care Center, at 4001 Capitol Mall Drive SW, Olympia, WA 98502, which details are herein.

The investigation period is 08/04/12 through 09/12/12.

Prior History: None

Section 3(d) Employer: Kasey Kemmet, Administrator at Puget Sound Health Care Center appears to be the one who controls and manages the business, and makes all financial decisions for the firm. Authority for hiring, firing, and deciding on how much to pay each EE were delegated to Allison Paquette, Director of Nursing.

MODO: Extendicare Health Services, Inc. headquartered at 111 West Michigan Avenue Milwaukee, Wisconsin, 53203. (b) (7)(E)

(Ex. D-1).

Exemptions:

CFR 541.100 Executive Employees / CFR 541.200 Administrative Employees / CFR 541.500 Outside Sales Employees / CFR 541.301 Professional / CFR 541.302 Creative Professionals / CFR 541.400 Computer Employees / CFR 541.500 Outside Sales Employees:

(b) (6), (b) (7)(C) does not qualify for any 541 exemption as (b) (6), (b) (7)(C)'s primary duty was to provide assistant to patients such as checking their blood pressures and assist them to take showers.

Status of Compliance:

Reason for Investigation: The investigation was initiated (b) (7)(E)

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) returned to work in late March this year after having (b) (6), (b) (7)(C) baby. (b) (6), (b) (7)(C) states (b) (6), (b) (7)(C) ER will not give (b) (6), (b) (7)(C) a place to express (b) (6), (b) (7)(C) breast milk. The Administrator told (b) (6), (b) (7)(C) to use the supply room and lock the door. (b) (6), (b) (7)(C) was walked in on several times since other EEs have the spare key. (b) (6), (b) (7)(C) sits on a garbage can in the supply room to express (b) (6), (b) (7)(C) breast milk. A RN told (b) (6), (b) (7)(C) to get a note from the Administrator saying (b) (6), (b) (7)(C) can take breaks and use the supply room to express (b) (6), (b) (7)(C) milk. The administrator refused and (b) (6), (b) (7)(C) informed (b) (6), (b) (7)(C) supervisor of the harassment but nothing has been done.

(b) (6), (b) (7)(C) was scheduled for an 8 hrs shift on 08/03/12 (Friday) but left after 2 hours because the harassment was so bad. When (b) (6), (b) (7)(C) returned to work the next day 08/04/12 (Sat.), (b) (6), (b) (7)(C) was taken off (b) (6), (b) (7)(C) shifts for both Sat. and Sun. ER has not returned (b) (6), (b) (7)(C)'s call since (b) (6), (b) (7)(C) (b) (7)(E)

207(r)(1)(A) - Failure to provide adequate break time (frequency, duration, or complete denial):No violations found. (b) (6), (b) (7)(C) was given adequate break time to express (b) (6), (b) (7)(C) breast milk. (b) (6), (b) (7)(C) needs to express (b) (6), (b) (7)(C) breast milk four times per shift and (b) (6), (b) (7)(C) was provided four 15 minutes breaks to do so.

207(r)(1)(B) - Failure to provide functional space (bathroom not permissible, space not free from intrusion, not shielded from view): Violations found. (b) (6), (b) (7)(C) initially had to express (b) (6), (b) (7)(C) milk in the supply room; however, other EEs can open the door at any time using a spare key. (b) (6), (b) (7)(C) was walked in on several times. After (b) (6), (b) (7)(C) (b) (7)(E) had a meeting with the firm's Administrator, Kasey Kemmet to discuss (b) (6), (b) (7)(E) Kemmet suggested (b) (6), (b) (7)(E) use an old Resident Care Manager's office to express (b) (6), (b) (7)(E) milk, however, (b) (6), (b) (7)(E) stated that room is used for store extra hospital bed and

batteries, and there is no key to it. EEs do pop the door open when they need to get supplies. (b) (6), (b) (7)(C) was walked in several times as well while expressing breast milk from the room. Kemmet told (b) (6), (b) (7)(C) can put a sign up the door telling people not to enter, and (b) (6), (b) (7)(C) stated a sign was never provided to (b) (6), (b) (7)(C). In addition, the room has windows with no screens where other EEs or the public can see the room from outside.

207(r)(2) – Compensation for Break Time: No violations found. The ER did not object to paying (b) (6), (b) (7)(C) for the break time utilized to express (b) (6), (b) (7)(C) breast milk, nor had it restricted (b) (6), (b) (7)(C) time to do so. (b) (6), (b) (7)(C) stated (b) (6), (b) (7)(C) had no problems with the amount of time to express (b) (6), (b) (7)(C) breast milk.

207(r)(3) – Undue Hardship: (b) (6), (b) (7)(C) advised there are at least 150 EEs on (b) (6), (b) (7)(C) shift alone, as well as 262 other Extencicare facilities operating in United States and Canada. All EEs must be counted, regardless of work site, for this exemption to be considered; the ER has approximately (b) (4) EEs total, making this exemption inapplicable. The ER made no objection to its obligation to comply with the Break Time for Nursing Mothers provision.

Dispositions: A final conference was held with Kasey Kemmet, Administrator on August 30, 2012 via telephone. A comprehensive explanation of the Break Time for Nursing Mothers provision was provided by WHI (b) (6), (b) (7)(C). Kemmet stated the (b) (6), (b) (7)(C) was 45 minutes late for (b) (6), (b) (7)(C) shift on Friday, August 3, 2012, and immediately after (b) (6), (b) (7)(C) walked in, (b) (6), (b) (7)(C) took a break to express (b) (6), (b) (7)(C) breast milk. The nurse asked: “Do you have to do that right now?” and that was it. (b) (6), (b) (7)(C) walked off her job 2 hours later on Friday. The Staffing Coordinator, Stephanie Moore did not know if she will return or not, so she took (b) (6), (b) (7)(C) off the schedule for the next day. Kemmet further stated during her meeting with (b) (6), (b) (7)(C) on August 14, 2012, she agreed to provide all staff a sensitivity training to educate all staff about the need for nursing mother as required by the Act, which was done on August 16, 2012. Kemmet further stated she checked with (b) (6), (b) (7)(C) last week and asked (b) (6), (b) (7)(C) if everything is ok, and (b) (6), (b) (7)(C) stated everything is fine. She is not aware that (b) (6), (b) (7)(C) still feel the room provided was inadequate. Kemmet stated that she understood the firm's obligation to comply with this stipulation and provided a detailed account of steps taken to come into immediate compliance. On top of the sensitivity training to all staff, which occurred on August 16, 2012, she also agree to provide the Transportation Coordinator's office to (b) (6), (b) (7)(C) as a nursing room, the room will have a lock from inside, there will not be a key to other EEs, and the room will be shielded from view, and free from any intrusion from other EEs and the public.

Publications provided: Handy Reference Guide & Fact Sheet #73.

(b) (6), (b) (7)(C) **Notification:** (b) (6), (b) (7)(C) (b) (7)(E) (b) (6), (b) (7)(C) was contacted via phone on September, 04, 2012. (b) (6), (b) (7)(C) stated no one told (b) (6), (b) (7)(C) can use the Transportation Coordinator's office to express (b) (6), (b) (7)(C) breast milk, instead, (b) (6), (b) (7)(C) was provided a sign that read, “Do not disturb, do not enter when sign is up.” (b) (6), (b) (7)(C) stated the sign do work, people no longer walked in on (b) (6), (b) (7)(C) while (b) (6), (b) (7)(C) expresses (b) (6), (b) (7)(C) breast milk, but (b) (6), (b) (7)(C) is still using the same

room with no screens. WHI contacted Kasey Kemmet, Administrator on the same day to check on the status but Kemmet did not reply. Few more attempts was made to try to get a hold of Kemmet but was unsuccessful. (b) (6), (b) (7)(C) was contacted on September 10, 2012 again to check and see if (b) (6), (b) (7)(C) was offered the office of the Transportation Coordinator as agreed by Kemmet. (b) (6), (b) (7)(C) stated (b) (6), (b) (7)(C) saw Kemmet twice at work but Kemmet did not mention anything to (b) (6), (b) (7)(C). Another message was left on Kemmet's machine on September 10, 2012.

On September 12, 2012, WHI (b) (6), (b) (7)(C) contacted Kemmet and got a hold of her. Kemmet stated she delegated the responsibility of providing the Transportation Coordinator's office to (b) (6), (b) (7)(C) to Allison Paquette, Director of Nursing. WHI (b) (6), (b) (7)(C) spoke with Paquette, she stated she did not verbally communicate to (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) can start using the Transportation Coordinator's office since (b) (6), (b) (7)(C) thought that was already being taking care of. She also stated that she passed by (b) (6), (b) (7)(C) few times but (b) (6), (b) (7)(C) did not mention anything to her. Paquette stated she will physically go offer (b) (6), (b) (7)(C) the Transportation Coordinator's office for (b) (6), (b) (7)(C) to express (b) (6), (b) (7)(C) breast milk from now on. WHI (b) (6), (b) (7)(C) confirmed with (b) (6), (b) (7)(C) the ER's remedy and current compliance on the same day.

Recommendation: It is recommended that this case be administratively closed.

Correspondence:

All correspondence should be directed to
Kasey Kemmet, Administrator
Puget Sound Healthcare

Case ER: Case ID: 1665884

dba / Puget Sound Health Care Center
4001 Capitol Mall Drive SW
Olympia, WA 98502

(b) (6), (b) (7)(C), Investigator
09/12/12

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1669658 Originating District: Sacramento District Office
Local Filing Number: 2012-302-05311 Investigating District: Sacramento District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 09/19/2012
Assignment Date: 09/19/2012

Employer Information

Trade Name: USPS Legal Name: United States Postal Service
Address: 3775 Industrial Blvd. EIN: EIN Missing
County: Yolo
NAICS Code: 491110
West Sacramento, CA95799 No. Of Employees: 1200

Investigation Information

Period Investigated From: 06/30/2012 BNPI:
To: 09/26/2012 Reinvestigation: ☒
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Full Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☒
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

FLSNM (b) (7)(E) USPS EE. (b) (7)(E) claimed ER did not immediately provide space, then office provided had limited access. IC/FC w/ER Bob Garza on 9/26/12. ER ATFC, designated office for (b) (7)(E) use and EE to provide access to (b) (7)(E) when needed. (b) (7)(E) notified 9/28/12 and confirmed ER compliance. Rec. admin close. Pubs FS 44, 73, 77A, 29 USC 207(r), HRG.

WHI Signature: _____ Date: 10/03/2012

Reviewed By: _____ Date: _____

2012-302-05311

United States Postal Service (USPS)
3775 Industrial Blvd.
West Sacramento, CA 95799

Correspondence to go to:

Bob Garza
Senior Manager Distributions Operation
Cell: (916) 213-0233

FLSANM NARRATIVE

REASON FOR INVESTIGATION

This investigation was conducted (b) (7)(E) (b) (6), (b) (7)(C) under the Patient Protection and Affordable Care Act amendment to the FLSA (Break Time for Nursing Mothers). (b) (6), (b) (7)(C) (b) (7)(E) upon returning to work on (b) (6), (b) (7)(C) took it upon (b) (6), (b) (7)(C) to use the maintenance locker room to pump (b) (6) r milk during (b) (6) r breaks. (b) (6) e did not notify (b) (6) r supervisor but instead went directly to the maintenance supervisor to ask permission. On September 11, 2012, (b) (6), (b) (7)(C) supervisor, Ben Bugarin, informed (b) (6) r that (b) (6) e could no longer use the maintenance locker room to pump (b) (6) r milk because a maintenance employee had complained. (b) (6), (b) (7)(C) repeatedly requested an alternate space and was directed to their locker room, which (b) (6) e refused to use due to lack of privacy. **See Ex. B-1-a.**

(b) (6), (b) (7)(C) did not pump milk at work again until September 19, 2012 when Bob Garza, Senior Manager Distribution Operation (MDO), provided (b) (6), (b) (7)(C) with the office of a manager who worked graveyard. From (b) (6), (b) (7)(C) was able to use one of several offices to pump (b) (6) r milk. **See Ex. B-1-a.** However, (b) (6), (b) (7)(C) often had trouble gaining access because no particular office had been designated for (b) (6) r use, all the offices are located behind a door that required cardkey access, each office required a key to unlock, and no one in particular had been designated to provide (b) (6), (b) (7)(C) with access when (b) (6) e needed it. **See Ex. B-1-b.** (b) (7)(E) Employer agreed to future compliance by designating a specific office for (b) (6), (b) (7)(C) use and by designating a specific person to provide (b) (6), (b) (7)(C) with access to the office whenever (b) (6) e needs it. **See Ex. C-1.**

COVERAGE

The United States Postal Service is a covered employer under section 3(s)(1)(C) of the FLSA as a public agency.

(b) (6), (b) (7)(C) is specifically covered under the Break Time for Nursing Mothers provision of the FLSA because (b) (6), (b) (7)(C) is a nursing mother with a need to express milk (b) (6), (b) (7)(C) See Ex. B-1-a.

PERIOD OF INVESTIGATION

Period of investigation was limited to the time when (b) (6), (b) (7)(C) was covered under the Break Time for Nursing Mothers provision, beginning on the day (b) (6), (b) (7)(C) returned to work after giving birth (b) (6), (b) (7)(C). June 30, 2012 – September 26, 2012. See Ex. B-1-a.

MODO

The Baltimore, Maryland district office is the MODO. United States Postal Service main office is located at Room 9670, 475 L'Enfant Plaza, Washington, DC 20260. The subject establishment is located at 3775 Industrial Blvd., West Sacramento, CA 95799. (b) (7)(E)

See Ex. D-3.

PRIOR HISTORY

No prior history at this establishment regarding Break Time for Nursing Mothers provisions. Numerous FMLA investigations, including Case ID 1191265, 1192070, 84297, 241638, 241640, 1464794, 1508944, 1602155, and 1611421.

EXEMPTIONS

Not applicable. (b) (6), (b) (7)(C) is a non-exempt employee paid on an hourly basis and is therefore subject to Section 7 of the FLSA and the protections of the Break Time for Nursing Mothers provision of the FLSA.

STATUS OF COMPLIANCE

Section 7(r)(1)(A) – Reasonable Break Time

No violation found. (b) (6), (b) (7)(C) works swing-shift from 3:00 PM to 11:30 PM Tuesday through Saturday. (b) (6), (b) (7)(C) is able to pump (b) (6), (b) (7)(C) milk when needed, approximately every 2 ½ hours during (b) (6), (b) (7)(C) breaks and lunch. See Ex. B-1-a.

Section 7(r)(1)(B) – A Place, Other than a Bathroom, Shielded from View and Free from Intrusion

Violation found. At the time (b) (7)(E) (b) (6), (b) (7)(C) immediate supervisor, (b) (6), (b) (7)(C), had attempted to designate a locker room for (b) (6), (b) (7)(C) to use when (b) (6), (b) (7)(C) needed to pump (b) (6), (b) (7)(C) milk. When (b) (6), (b) (7)(C) declined, no place was provided until more than one week later on September 19, 2012. See Ex. B-1-a. Although Bob Garza, Senior Manager Distribution Operation (MDO), provided (b) (6), (b) (7)(C) with a suitable office that was shielded from view and free from intrusion, (b) (6), (b) (7)(C) subsequently faced challenges

gaining access to the office because a card key and key were required and no one in particular had been designated to give (b) (6), (b) (7)(C) access when (b) (6), (b) (7)(C) needed it. **See Ex. B-1-b.**

DISPOSITION

On September 26, 2012, I met with Mr. Garza and Angela Batiste, Supervisor Distribution Operation, to discuss (b) (6), (b) (7)(C)(b) (7)(E), as well as what steps needed to be taken in order to come into compliance. **See Ex. C-1.** After we reviewed the statutory language and Fact Sheet #73, Mr. Garza expressed that the following steps had already been taken:

Arrangements have been made to give (b) (6), (b) (7)(C) access to an unoccupied office in the area known as "4040" where all the managers have their offices. The office has a door that locks and no windows. **See Ex. C-1.**

(b) (6), (b) (7)(C), a clerk who works the same days and shift as (b) (6), (b) (7)(C), will give (b) (6), (b) (7)(C) access to the office whenever (b) (6), (b) (7)(C) needs to pump (b) (6), (b) (7)(C) milk. (b) (6), (b) (7)(C) office is located convenient to (b) (6), (b) (7)(C) work station and (b) (6), (b) (7)(C) is able to walk right in when (b) (6), (b) (7)(C) needs access. (b) (6), (b) (7)(C) has both the card key to gain access to the "4040" and the key to the office (b) (6), (b) (7)(C) is using to pump (b) (6), (b) (7)(C) milk and provided (b) (6), (b) (7)(C) access the previous day during (b) (6), (b) (7)(C) shift. **See Ex. C-1.**

Mr. Garza also agreed to the following in order to comply in the future:

- 1) To allow (b) (6), (b) (7)(C) break time to pump (b) (6), (b) (7)(C) milk in addition to (b) (6), (b) (7)(C) designated breaks and lunch if necessary. **See Ex. C-1.**
- 2) To not discriminate or retaliate against (b) (6), (b) (7)(C) (b) (7)(E) **See Ex. C-1.**
- 3) To not designate a bathroom or locker room as a place for a nursing mother to express (b) (6), (b) (7)(C) milk. **See Ex. C-1.**

On September 26, 2012, I toured the office designated as the place for (b) (6), (b) (7)(C) to pump (b) (6), (b) (7)(C) milk and confirmed that it has a door with a lock and no windows. I also met with the employee designated to give (b) (6), (b) (7)(C) access to the office.

RECOMMENDATIONS

(b) (7)(E), I recommend that this case be administratively closed.

(b) (6), (b) (7)(C) NOTIFICATION

On September 27, 2012, I spoke with (b) (6), (b) (7)(C) and confirmed that (b) (6), (b) (7)(C) employer had taken all steps to come

into compliance and that no further action was necessary.

PUBLICATIONS

The following publications were discussed and provided on September 26, 2012: Handy Reference Guide, Fact Sheets # 44, 73, 77A and 29 U.S.C. § 207(r).

(b) (6), (b) (7)(C)

Wage & Hour Investigator

10/3/12

WHISARD Compliance Action Report

U.S. Department of Labor Wage and Hour Division

Case ID: 1670221 Originating District: Sacramento District Office
Local Filing Number: 2012-302-05317 Investigating District: Sacramento District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 09/24/2012
Assignment Date: 09/24/2012

Employer Information

Trade Name: Teledirect Call Center Legal Name: Teledirect Communications Inc.
Address: 4745 Chippendale Dr EIN: EIN Missing
County: Sacramento
NAICS Code: 56142
Sacramento, CA95841 No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 09/04/2012 BNPI:
To: 09/28/2012 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Full Investigation Future Compliance Agreed: ☐
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☒
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

FLSANM (b) (7)(E) inv. of call center. (b) (7)(E) claimed no reasonable break time or place to pump milk and then termination in retaliation for asserting rights. (b) (7)(E). ER ATFC. Joint ER employment agency ATP back pay on behalf of ER, signed WH-56 & BW Agmt to pay \$1372.50 in back pay by 10/19/12. See Case ID 1670428. (b) (7)(E) confirmed pymt. Rec. admin close. Pubs - HRG, FS #44, 73, 77A and 29 U.S.C. sec. 207(r).

WHI Signature: _____ Date: 12/10/2012

Reviewed By: _____ Date: _____

2012-302-05317

Case ID 1670221

Teledirect Call Centers
4745 Chippendale Dr.
Sacramento, CA 95841

Correspondence to go to:

Deneen Barajas
Payroll/HR
(800) 776-1081 Phone
(916) 331-5248 Fax

FLSANM NARRATIVE

REASON FOR INVESTIGATION

This is (b) (7)(E) investigation of a call center, Teledirect Communications, Inc. dba Teledirect Call Centers (Teledirect). Employee (b) (6), (b) (7)(C)(b) (7)(E) violation of the Patient Protection and Affordable Care Act amendment to the FLSA (Break Time for Nursing Mothers). (b) (6), (b) (7)(C)(b) (7)(E) AppleOne, Inc., an employment agency, placed (b) (6), (b) (7)(C) with Teledirect where (b) (6), (b) (7)(C) worked as a call center representative from September 4, 2012 through September 10, 2012 when (b) (6), (b) (7)(C) was terminated. (b) (6), (b) (7)(C) (b) (7)(E) Teledirect violated (b) (6), (b) (7)(C) rights as a nursing mother by refusing to provide (b) (6), (b) (7)(C) sufficient break time to pump (b) (6), (b) (7)(C) milk, requiring (b) (6), (b) (7)(C) to pump in the bathroom, and then terminating (b) (6), (b) (7)(C) employment. **See Ex. B-1.**

(b) (7)(E) Employer Teledirect agreed to future compliance with the Break Time for Nursing Mothers provisions. **See Ex. C-1-b.** Joint employer AppleOne, Inc. elected to pay the back pay totaling \$1372.50 that was computed for (b) (6), (b) (7)(C) as a result of (b) (6), (b) (7)(C) termination. **See Case ID 1670428.**

COVERAGE

(b) (6), (b) (7)(C) is individually covered by the FLSA because (b) (6), (b) (7)(C) was engaged in interstate commerce. As a customer services representative for Teledirect, (b) (6), (b) (7)(C) spoke with people from different states on a daily basis and took their reservations for seminars occurring throughout the country. **See Ex. B-2.**

PERIOD OF INVESTIGATION

September 4, 2012 through September 28, 2012.

MODO

Sacramento District Office. Teledirect is headquartered at 4745 Chippendale Dr., Sacramento, CA 95841. ***See Ex. C-2-a.***

PRIOR HISTORY

No prior history found in WHISARD.

JOINT EMPLOYMENT

(b) (6), (b) (7)(C) was jointly employed by both AppleOne, Inc. and Teledirect. Apple One, Inc. is the employment agency that interviewed (b) (6), (b) (7)(C), hired and placed (b) (6), (b) (7)(C) with Teledirect, and paid (b) (6), (b) (7)(C) wages. ***See Ex. B-1-a, D-3-a, and E-1-a.*** Teledirect trained (b) (6), (b) (7)(C) as a customer service representative, determined (b) (6), (b) (7)(C) work schedule, provided the tools (b) (6), (b) (7)(C) needed to perform (b) (6), (b) (7)(C) job, and ultimately terminated (b) (6), (b) (7)(C). ***See Ex. B-1-a, B-1-c, C-1-a, and D-7-a.***

EXEMPTIONS

Not applicable. (b) (6), (b) (7)(C) is a non-exempt employee paid on an hourly basis and is therefore subject to Section 7 of the FLSA and the protections of the Break Time for Nursing Mothers provision of the FLSA. ***See Ex. B-1-c.***

STATUS OF COMPLIANCE

Section 7(r)(1)(A) – Reasonable Break Time

Violation found. (b) (6), (b) (7)(C) was not provided sufficient time to pump (b) (6), (b) (7)(C) milk beyond the time designated as (b) (6), (b) (7)(C) break and lunch periods. (b) (6), (b) (7)(C) was only able to pump (b) (6), (b) (7)(C) milk during (b) (6), (b) (7)(C) lunch because (b) (6), (b) (7)(C) did not have sufficient time during (b) (6), (b) (7)(C) breaks. ***See Ex. B-1- and B-1-b.***

Section 7(r)(1)(B) – A Place, Other than a Bathroom, Shielded from View and Free from Intrusion

Violation found. On two separate occasions, Teledirect provided (b) (6), (b) (7)(C) with a bathroom as the place for (b) (6), (b) (7)(C) to pump (b) (6), (b) (7)(C) milk. ***See Ex. B-1-a, B-1-c, and C-1-a.*** Initially, (b) (6), (b) (7)(C) pumped (b) (6), (b) (7)(C) milk on the bathroom floor next to the electrical outlet in plain view of other employees. ***See Ex. B-1-a.***

Section 15(a)(3) – Prohibiting Retaliation Under the FLSA

Violation found. Teledirect retaliated against (b) (6), (b) (7)(C) for asserting (b) (6), (b) (7)(C) rights as a nursing mother when it terminated (b) (6), (b) (7)(C) from (b) (6), (b) (7)(C) position as a call center representative. Beginning on (b) (6), (b) (7)(C) first day of work,

(b) (6), (b) (7)(C) asserted (b) (6), (b) (7)(C) rights by requesting reasonable time and a place to pump (b) (6), (b) (7)(C) milk. (b) (6), (b) (7)(C) made this request of several Teledirect employees, including (b) (6), (b) (7)(C) supervisor, trainer, and human resources staff. **See Ex. B-1-a.** When Teledirect denied (b) (6), (b) (7)(C) sufficient time to pump during (b) (6), (b) (7)(C) breaks and then required (b) (6), (b) (7)(C) to pump in the bathroom, (b) (6), (b) (7)(C) called AppleOne to inform them of (b) (6), (b) (7)(C) situation and to seek assistance. **See Ex. B-1-b.** Up until (b) (6), (b) (7)(C) was terminated, (b) (6), (b) (7)(C) had to request a place to pump (b) (6), (b) (7)(C) milk each day (b) (6), (b) (7)(C) reported to work because no place had been designated for (b) (6), (b) (7)(C). **See Ex. B-1-b.**

On the day (b) (6), (b) (7)(C) was terminated, (b) (6), (b) (7)(C) had been written up for having (b) (6), (b) (7)(C) cell phone with (b) (6), (b) (7)(C). **See Ex. B-1-b, C-1-a, and E-1-a.** Although company policy prohibits cell phones in the building, the policy signed by (b) (6), (b) (7)(C) on (b) (6), (b) (7)(C) first day of work states that employees will be written up for their first violation and terminated after their second violation. **See Ex. D-4.** (b) (6), (b) (7)(C) was terminated after (b) (6), (b) (7)(C) first violation. **See Ex. C-1-a and D-2-a.** Both AppleOne and Teledirect failed to provide any information to show that other employees were treated similarly to (b) (6), (b) (7)(C). Based on the information provided, other employees who had violated the policy prior to (b) (6), (b) (7)(C) were written up but not terminated after their first violation. **See Ex. D-1-a through D-2-b.** Subsequent to (b) (6), (b) (7)(C) one employee was terminated after (b) (6), (b) (7)(C) first violation. **See Ex. D-2-a and D-8-a through D-11-b.**

Back pay was computed for (b) (6), (b) (7)(C) for five weeks from the date (b) (6), (b) (7)(C) was terminated on September 10, 2012 based on the facts that the project was advertised to run anywhere from six to ten weeks and (b) (6), (b) (7)(C) was terminated after one week. **See Ex. B-1-a, B-1-d, D-3-a, and Case ID 1670428.** Back pay was computed at (b) (6), (b) (7)(C) per hour, (b) (6), (b) (7)(C) hourly rate, and for 30 hours each week since (b) (6), (b) (7)(C) schedule fluctuated and the position called for 20-40 hours a week. **See Ex. A-1, B-1-c, and D-3-a.** Computed back pay totaled \$1372.50. **See Case ID 1670428.**

DISPOSITION

On September 28, 2012, I met with Daneen Barajas, Payroll and H/R for Teledirect. **See Ex. C-1.** After we reviewed the statutory language and Fact Sheet #73, Ms. Barajas expressed her understanding that her company is jointly responsible for complying with the break time for nursing mothers provisions with regards to AppleOne employees as well as for complying with regards to their own employees. **See Ex. C-1-b.**

Ms. Barajas also agreed to the following in order to comply in the future:

- 1) We agree to comply in the future by allowing reasonable break time to nursing mothers to express their milk until their child turns one year old. **See Ex. C-1-b.**
- 2) We agree to allow break time beyond paid breaks if needed and during training as well. **See Ex. C-1-b.**

- 3) We agree to provide a space that is shielded from view, free from intrusion by coworkers and the public, available to the nursing mother when needed, and not a bathroom or locker room. **See Ex. C-1-b.**

On October 3, 2012, Ms. Barajas indicated that she had no further information to provide me with regards to (b) (6), (b) (7)(C). **See Ex. D-1-a.** AppleOne agreed to take responsibility as a joint employer for any monetary liability found on the part of Teledirect. On October 11, 2012, AppleOne signed Form WH-56 and a Back Wage Compliance and Payment Agreement agreeing to pay (b) (6), (b) (7)(C) back pay in the amount of \$1372.50 no later than October 19, 2012. **See Case ID 1670428.**

RECOMMENDATIONS

(b) (7)(E)

recommend that this case be administratively closed.

(b) (6), (b) (7)(C) NOTIFICATION

On November 6, 2012, I spoke with (b) (6), (b) (7)(C) and confirmed that AppleOne had paid (b) (6), (b) (7)(C) back pay of \$1372.50 as agreed.

PUBLICATIONS

The following publications were discussed and provided on September 28, 2012: Handy Reference Guide, Fact Sheets # 44, 73, 77A and 29 U.S.C. § 207(r).

(b) (6), (b) (7)(C)

Wage & Hour Investigator

12/10/12

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1670428 Originating District: Sacramento District Office
Local Filing Number: 2012-302-05321 Investigating District: Sacramento District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 09/25/2012
Assignment Date: 09/25/2012

Employer Information

Trade Name: AppleOne Legal Name: AppleOne, Inc.
Address: 8880 Cal Center Drive, Ste. 100 EIN: ER Refused
County: Sacramento
NAICS Code: 561311
Sacramento, CA95826 No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 09/04/2012 BNPI:
To: 10/11/2012 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Full Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☒
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: 10/19/2012
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	1	1	\$1,372.50	\$1,372.50	\$0.00	\$0.00	

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	1	Unduplicated Employees Agreed:	1
Total Amount BWs Computed:	\$1,372.50	Total Amount BWs Agreed:	\$1,372.50
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

FLSANM inv. of joint ER employment agency. ER placed (b)(7)(E) with call center that failed to provide reasonable break time and place for (b)(7)(E) to pump milk and then terminated (b)(7)(E) in retaliation for asserting (b)(7)(E) rights. ER ATP back pay on behalf of call center and ATFC by discussing FLSANM provisions client ERs prior to placing nursing mothers. FC on 10/11/12 w/Asst Mgr Joshua Leighton. Signed WH-56 and BW Agmt to pay back pay of \$1372.50 by 10/19/12. (b)(7)(E) confirmed pymt. Rec. admin close (b)(7)(E)

WHI Signature: _____ Date: 12/07/2012

Reviewed By: _____ Date: _____

2012-302-05321

AppleOne, Inc.
8880 Cal Center Drive, Suite 100
Sacramento, CA 95826

Correspondence to go to:

Joshua Leighton
Assistant Manager
(916) 483-9180 Phone
(916) 483-3157 Fax
jleighton@appleone.com

FLSANM NARRATIVE

REASON FOR INVESTIGATION

This is a (b) (7)(E) investigation of a joint employer employment agency. Employee (b) (6), (b) (7)(C) (b) (7)(E) violation of the Patient Protection and Affordable Care Act amendment to the FLSA (Break Time for Nursing Mothers). (b) (6), (b) (7)(C) (b) (7)(E) AppleOne, Inc., an employment agency, placed (b) (6), (b) (7)(C) with Teledirect Call Center (Teledirect) where (b) (6), (b) (7)(C) worked as a call center representative. (b) (6), (b) (7)(C) (b) (7)(E) Teledirect violated (b) (6), (b) (7)(C) rights as a nursing mother by refusing to provide (b) (6), (b) (7)(C) sufficient break time to pump (b) (6), (b) (7)(C) milk, requiring (b) (6), (b) (7)(C) to pump in the bathroom, and then terminating (b) (6), (b) (7)(C) employment. *See Ex. B-1.*

(b) (7)(E) Joint employer AppleOne, Inc. agreed to future compliance by discussing (b) (6), (b) (7)(C) rights as a nursing mother with any future employer's prior to placement. *See Ex. C-1-a through C-1-b.* AppleOne, Inc. also agreed to pay (b) (6), (b) (7)(C) back pay in the amount of \$1372.50. *See signed WH-56 and Back Wage Compliance and Payment Agreement.*

COVERAGE

(b) (6), (b) (7)(C) is individually covered by the FLSA because (b) (6), (b) (7)(C) was engaged in interstate commerce. As a customer services representative for Teledirect, (b) (6), (b) (7)(C) spoke with people from different states on a daily basis and took their reservations for seminars occurring throughout the country. *See Ex. B-2.*

PERIOD OF INVESTIGATION

September 4, 2012 through September 28, 2012.

MODO

The Los Angeles District Office is the MODO. Corporate office for Apple One is located at 327 W. Broadway, Glendale, CA 91204. The subject establishment is located at 8880 Cal Center Drive, Ste. 100, Sacramento, CA 95826. (b) (7)(E) See Ex. D-16-a through D-17-c.

PRIOR HISTORY

No prior history at this establishment. Several FLSA (b) (7)(E) nationwide, but no full investigations. See Case ID 1235837, 85353, 406988, 408931, 1405690, 1638542.

JOINT EMPLOYMENT

(b) (6), (b) (7)(C) was jointly employed by both AppleOne, Inc. and Teledirect. Apple One, Inc. is the employment agency that interviewed (b) (6), (b) (7)(C), hired and placed (b) (6), (b) (7)(C) with Teledirect, and paid (b) (6), (b) (7)(C) wages. See Ex. B-1-a, C-1-a, and D-5-a. Teledirect trained (b) (6), (b) (7)(C) as a customer service representative, determined (b) (6), (b) (7)(C) work schedule, provided the tools (b) (6), (b) (7)(C) needed to perform (b) (6), (b) (7)(C) job, and ultimately terminated (b) (6), (b) (7)(C). See Ex. B-1-a, B-1-c, D-11-a, and E-1-a.

EXEMPTIONS

Not applicable. (b) (6), (b) (7)(C) is a non-exempt employee paid on an hourly basis and is therefore subject to Section 7 of the FLSA and the protections of the Break Time for Nursing Mothers provision of the FLSA. See Ex. B-1-c.

STATUS OF COMPLIANCE

Section 7(r)(1)(A) – Reasonable Break Time

Violation found. (b) (6), (b) (7)(C) was not provided sufficient time to pump (b) (6), (b) (7)(C) milk beyond the time designated as (b) (6), (b) (7)(C) break and lunch periods. (b) (6), (b) (7)(C) was only able to pump (b) (6), (b) (7)(C) milk during (b) (6), (b) (7)(C) lunch because (b) (6), (b) (7)(C) did not have sufficient time during (b) (6), (b) (7)(C) breaks. See Ex. B-1- and B-1-b.

Section 7(r)(1)(B) – A Place, Other than a Bathroom, Shielded from View and Free from Intrusion

Violation found. On two separate occasions, Teledirect provided (b) (6), (b) (7)(C) with a bathroom as the place for (b) (6), (b) (7)(C) to pump (b) (6), (b) (7)(C) milk. See Ex. B-1-a, B-1-c, and E-1-a. Initially, (b) (6), (b) (7)(C) pumped (b) (6), (b) (7)(C) milk on the bathroom floor next to the electrical outlet in plain view of other employees. See Ex. B-1-a.

Section 15(a)(3) – Prohibiting Retaliation Under the FLSA

Violation found. Teledirect retaliated against (b) (6), (b) (7)(C) for asserting (b) (6), (b) (7)(C) rights as a nursing mother when it terminated (b) (6), (b) (7)(C) from (b) (6), (b) (7)(C) position as a call center representative. Beginning on (b) (6), (b) (7)(C) first day of work,

(b) (6), (b) (7)(C) asserted (b) (6), (b) (7)(C) rights by requesting reasonable time and a place to pump (b) (6), (b) (7)(C) milk. (b) (6), (b) (7)(C) made this request of several Teledirect employees, including (b) (6), (b) (7)(C) supervisor, trainer, and human resources staff. **See Ex. B-1-a.** When Teledirect denied Complainant sufficient time to pump during (b) (6), (b) (7)(C) breaks and then required (b) (6), (b) (7)(C) to pump in the bathroom, (b) (6), (b) (7)(C) called AppleOne to inform them of (b) (6), (b) (7)(C) situation and to seek assistance. **See Ex. B-1-b.** Up until (b) (6), (b) (7)(C) was terminated, (b) (6), (b) (7)(C) had to request a place to pump (b) (6), (b) (7)(C) milk each day (b) (6), (b) (7)(C) reported to work because no place had been designated for (b) (6), (b) (7)(C). **See Ex. B-1-b.**

On the day (b) (6), (b) (7)(C) was terminated, (b) (6), (b) (7)(C) had been written up for having (b) (6), (b) (7)(C) cell phone with (b) (6), (b) (7)(C). **See Ex. B-1-b, C-1-a, and E-1-a.** Although company policy prohibits cell phones in the building, the policy signed by (b) (6), (b) (7)(C) on (b) (6), (b) (7)(C) first day of work states that employees will be written up for their first violation and terminated after their second violation. **See Ex. D-8.** (b) (6), (b) (7)(C) was terminated after (b) (6), (b) (7)(C) first violation. **See Ex. D-4-a and E-1-a.** Both AppleOne and Teledirect failed to provide any information to show that other employees were treated similarly to (b) (6), (b) (7)(C). Based on the information provided, other employees who had violated the policy prior to (b) (6), (b) (7)(C) were written up but not terminated after their first violation. **See Ex. D-12-a through D-15-b.** Subsequent to (b) (6), (b) (7)(C), one employee was terminated after (b) (6), (b) (7)(C) first violation. **See Ex. D-4-a.**

Back pay was computed for (b) (6), (b) (7)(C) for five weeks from the date (b) (6), (b) (7)(C) was terminated on September 10, 2012 based on the facts that the project was advertised to run anywhere from six to ten weeks and (b) (6), (b) (7)(C) was terminated after one week. **See Ex. A-1, B-1-a, B-1-d, and D-5-a.** Back pay was computed at (b) (6), (b) (7)(C) per hour, (b) (6), (b) (7)(C) hourly rate, and for 30 hours each week since (b) (6), (b) (7)(C) schedule fluctuated and the position called for 20-40 hours a week. **See Ex. A-1, B-1-c, and D-5-a.** Computed back pay totaled \$1372.50.

DISPOSITION

On September 28, 2012, I met with Joshua Leighton, Assistant Manager for AppleOne. **See Ex. C-1.** After we reviewed the statutory language and Fact Sheet #73, Mr. Leighton expressed his understanding of the following:

- 1) Based on the information provided me today regarding the break time for nursing mothers provision of the FLSA, I understand our responsibilities under the law as a joint employer. **See Ex. C-1-a.**
- 2) I understand that an employer must provide break time as needed for a nursing mother to pump (b) (6), (b) (7)(C) milk until (b) (6), (b) (7)(C) child turns one year old. The time does not have to be paid but the mother must also be allowed to use (b) (6), (b) (7)(C) paid break time to pump (b) (6), (b) (7)(C) milk. **See Ex. C-1-a.**
- 3) I also understand that the employer must provide a space that is shielded from view and free from intrusion from coworkers and the public where the mother can pump (b) (6), (b) (7)(C) milk and that this space must be available as needed. **See Ex. C-1-a.**

- 4) I understand that both our company and our clients are jointly responsible as employers for compliance with the break time for nursing mothers provisions. **See Ex. C-1-a.**

Mr. Leighton also agreed to the following in order to comply in the future:

- 1) In the future, if we have an employee who has the need to pump (b) (6), (b) (7)(C) milk at work and we are aware of the need, we will discuss an employer's responsibilities under the FLSA with our client employer before placing the employee. **See Ex. C-1-a.**
- 2) With regards to (b) (6), (b) (7)(C), we will discuss (b) (6), (b) (7)(C) rights as a nursing mother with employers prior to placing (b) (6), (b) (7)(C) and I understand that our company is jointly responsible under the break time for nursing mothers provisions. **See Ex. C-1-a through C-1-b.**
- 3) I understand that (b) (6), (b) (7)(C) must be provided with reasonable break time as needed, as well as a space that is shielded from view, free from intrusion from coworkers and the public, available when needed, and not a bathroom or locker room. **Ex. C-1-b.**

On October 11, 2012, Mr. Leighton signed Form WH-56 and a Back Wage Compliance and Payment Agreement agreeing to pay (b) (6), (b) (7)(C) back pay in the amount of \$1372.50 no later than October 19, 2012.

RECOMMENDATIONS

(b) (7)(E) I recommend that this case be administratively closed.

COMPLAINANT NOTIFICATION

On November 6, 2012, I spoke with (b) (6), (b) (7)(C) and confirmed that AppleOne had paid (b) (6), (b) (7)(C) back pay of \$1372.50 as agreed.

PUBLICATIONS

The following publications were discussed and provided on September 26, 2012: Handy Reference Guide, Fact Sheets # 44, 73, 77A and 29 U.S.C. § 207(r).

(b) (6), (b) (7)(C)

Wage & Hour Investigator

12/6/12

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1673220 Originating District: Sacramento District Office
Local Filing Number: 2013-302-05369 Investigating District: Sacramento District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 10/19/2012
Assignment Date: 10/19/2012

Employer Information

Trade Name: United States Postal Service
Address: 3775 Industrial Blvd.

West Sacramento, CA95799

Legal Name: United States Postal Service
EIN: EIN Missing
County: Yolo
NAICS Code: 491110
No. Of Employees: 1200

Investigation Information

Period Investigated From: 09/27/2012 BNPI:
To: 10/22/2012 Reinvestigation: ☒
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Full Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☒
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

FMLA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FMLA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

FLSNM (b) (7)(E) retaliation & denial of paid breaks to pump milk. No retaliation found - performance issues (b) (7)(E) ER ATFC & to allow (b) (7)(E) to use paid breaks when (b) (6), (C) needed to pump instead of forcing (b) (7)(E) to take scheduled breaks & then use leave to pump milk. IC/FC w/ER Bob Garza on 10/22/12 w/status update on 1/3/13. (b) (7)(E) confirmed ER compliance on 1/3/13. Rec admin close. Pubs FS 28D, 44, 73, 77A, 29 USC 207(r), HRG.

WHI Signature: _____ Date: 01/03/2013

Reviewed By: _____ Date: _____

2013-302-05369

Case ID 1673220

United States Postal Service (USPS)

3775 Industrial Blvd.

West Sacramento, CA 95799

Correspondence to go to:

Bob Garza

Senior Manager Distributions Operation

Cell: (916) 213-0233

FLSANM NARRATIVE

REASON FOR INVESTIGATION

This investigation was conducted after (b) (7)(E) (b) (6), (b) (7)(C) under the Patient Protection and Affordable Care Act amendment to the FLSA (Break Time for Nursing Mothers). (b) (6), (b) (7)(C) (b) (7)(E) supervisor would not allow (b) (6), (b) (7)(E) to reschedule (b) (6), (b) (7)(E) paid breaks and lunch period in order to coincide with (b) (6), (b) (7)(E) need to pump milk, even though (b) (6), (b) (7)(E) changed breaks and lunch periods for other employees. *See Ex. B-1-a through B-1-b.* (b) (6), (b) (7)(C) also (b) (7)(E) supervisor changed (b) (6), (b) (7)(E) workstation and that this has interfered with (b) (6), (b) (7)(E) ability to pump milk. *See Ex. B-1-a.* (b) (6), (b) (7)(C) believes that (b) (6), (b) (7)(E) is being treated differently because (b) (6), (b) (7)(E) had previously (b) (7)(E) employer for failing to provide (b) (6), (b) (7)(E) a reasonable place to pump (b) (6), (b) (7)(E) milk. *See Ex. B-1-b through B-1-c and Case ID 1669658.*

COVERAGE

The United States Postal Service is a covered employer under section 3(s)(1)(C) of the FLSA as a public agency. (b) (6), (b) (7)(C) is specifically covered under the Break Time for Nursing Mothers provision of the FLSA because (b) (6), (b) (7)(C) is a nursing mother with a need to express milk for (b) (6), (b) (7)(C) *See Ex. B-1-a.*

PERIOD OF INVESTIGATION

Period of investigation was limited to the time when (b) (6), (b) (7)(C) was covered under the Break Time for Nursing Mothers provision, beginning on the day after the period of investigation for (b) (6), (b) (7)(C) previous (b) (7)(E) September 27, 2012 – October 22, 2012.

MODO

The Baltimore, Maryland district office is the MODO. United States Postal Service main office is located at Room 9670, 475 L'Enfant Plaza, Washington, DC 20260. The subject establishment is located at 3775 Industrial Blvd., West Sacramento, CA 95799. (b) (7)(E) **See Ex. D-14.**

PRIOR HISTORY

One prior history case at this establishment regarding Break Time for Nursing Mothers provisions. Previous (b) (7)(E) same (b) (6), (b) (7)(C) with violations found and agreement to comply. Case ID 1669658. **See Ex. D-16.** Numerous FMLA investigations, including Case ID 1191265, 1192070, 84297, 241638, 241640, 1464794, 1508944, 1602155, and 1611421.

EXEMPTIONS

Not applicable. (b) (6), (b) (7)(C) is a non-exempt employee paid on an hourly basis and is therefore subject to Section 7 of the FLSA and the protections of the Break Time for Nursing Mothers provision of the FLSA.

STATUS OF COMPLIANCE

Section 7(r)(1)(A) – Reasonable Break Time

Violation found. Employer refused to allow (b) (6), (b) (7)(C) to use (b) (6), (b) (7)(C) paid breaks and lunch to pump (b) (6), (b) (7)(C) milk. Employer instead required (b) (6), (b) (7)(C) to take breaks and lunch according to their schedule and then to take leave when (b) (6), (b) (7)(C) needed to pump (b) (6), (b) (7)(C) milk. **See Ex. B-1-a through B-1-b and C-1.**

Section 7(r)(1)(B) – A Place, Other than a Bathroom, Shielded from View and Free from Intrusion

No violation found. Employer agreed during the previous investigation to allow (b) (6), (b) (7)(C) access to an unoccupied office whenever (b) (6), (b) (7)(C) needs to pump (b) (6), (b) (7)(C) milk. **See Ex. D-16-c and Case ID 1669658.** Access to the office was confirmed during the current investigation.

Section 15(a)(3) – Prohibiting Retaliation Under the FLSA

No violation found. Employer changed (b) (6), (b) (7)(C) workstation due to performance issues that surfaced prior to Wage Hour contacting the employer regarding (b) (6), (b) (7)(C) (b) (7)(E) The employer initially documented performance issues on September 11, 2012 and followed up with 16 hours of on-the-job training between September 11, 2012 and September 20, 2012. **See Ex. D-1-b and D-4.** Employer continued to document similar performance issues in September and October 2012. **See Ex. D-1-c through D-1-k.** These issues arose independently of the employer's efforts to accommodate Complainant's needs to pump (b) (6), (b) (7)(C) milk.

DISPOSITION

On October 22, 2012, I met with Bob Garza, Senior Manager Distributions Operations, Debra Doss, Manager of Distribution Operations, and Ben Bugarin, Supervisor Distribution Operations, to discuss (b) (6), (b) (7)(C) (b) (7)(E), as well as what steps needed to be taken in order to come into compliance. **See Ex. C-1.** After we reviewed the statutory language and Fact Sheet #73, Mr. Garza acknowledged that the law entitles (b) (6), (b) (7)(C) to use (b) (6), (b) (7)(C) paid breaks to pump (b) (6), (b) (7)(C) milk. **See Ex. C-1.** For future compliance, Mr. Garza agreed to the following:

- 1) To not require (b) (6), (b) (7)(C) to take (b) (6), (b) (7)(C) breaks and lunch according to their schedule,
- 2) To allow (b) (6), (b) (7)(C) to use (b) (6), (b) (7)(C) paid breaks when (b) (6), (b) (7)(C) needs to pump (b) (6), (b) (7)(C) milk, and
- 3) To allow (b) (6), (b) (7)(C) to use paid or unpaid leave if (b) (6), (b) (7)(C) needs time beyond (b) (6), (b) (7)(C) breaks and lunch to pump (b) (6), (b) (7)(C) milk. **See Ex. C-1.**

On January 3, 2013, I spoke with Mr. Garza and informed him that I had concluded my investigation and that it did not support (b) (6), (b) (7)(C) (b) (7)(E) of retaliation because (b) (6), (b) (7)(C) performance issues arose prior (b) (7)(E) (b) (7)(E). Mr. Garza informed me that he had given (b) (6), (b) (7)(C) full access via her keycard to the office where (b) (6), (b) (7)(C) pumped (b) (6), (b) (7)(C) milk. Mr. Garza agreed to continued compliance.

RECOMMENDATIONS

(b) (7)(E) I recommend that this case be administratively closed.

COMPLAINANT NOTIFICATION

On January 3, 2013, I spoke with (b) (6), (b) (7)(C) regarding my investigative findings. (b) (6), (b) (7)(C) confirmed that (b) (6), (b) (7)(C) employer had accommodated (b) (6), (b) (7)(C) need to pump (b) (6), (b) (7)(C) milk and that (b) (6), (b) (7)(C) no longer has the need as (b) (6), (b) (7)(C) stopped pumping two weeks ago.

PUBLICATIONS

The following publications were discussed and provided on October 22, 2012: Handy Reference Guide, Fact Sheets # 44, 73, 77A and 29 U.S.C. § 207(r). Fact Sheet 28D was emailed to the employer on January 3, 2013.

(b) (6), (b) (7)(C)

Wage & Hour Investigator

1/3/13

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1684082 Originating District: San Diego District Office
Local Filing Number: 2013-315-04782 Investigating District: San Diego District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 02/06/2013
Assignment Date: 02/06/2013

Employer Information

Trade Name: Quest Diagnostics Legal Name: Quest Diagnostics Clinical Laboratories,
Address: 7910 Frost Street EIN: 16-1387862
Suite 180 County: San Diego
San Diego, CA92123 NAICS Code: 62151
No. Of Employees: (b) (7)(E)

Investigation Information

Period Investigated From: 08/01/2012 BNPI: 2000
To: 12/31/2012 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Compliance (no violations found) Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

FMLA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FMLA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	
Total Violations Under FMLA :	1						\$0.00

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

Total HRS: 40. FLSA-NM INV, ^{(b) (7)(E)} ER failed to provide space free from intrusion & failed to provide adequate break time; ^{(b) (7)(E)} FLSA policy review: ER written policy not updated to reflect statutory amendments effective 3/8/13. FC held via telephone on 4/22/13 w/ Eve Vandewieler & Meg Bassler. ER ATC/update policy by 4/30/13. ^{(b) (7)(E)} Rec case admin closed w/ no further action. PUBS:HRG,FS44,FS28D,FS77a,b.

WHI Signature: _____ Date: 04/23/2013

Reviewed By: _____ Date: _____

QUEST DIAGNOSTICS CLINICAL LABORATORIES, INC.
2013-315-04782

dba QUEST DIAGNOSTICS
7910 FROST STREET, SUITE 180
SAN DIEGO, CA 92123
Telephone No.: 619-291-4890
Facsimile No.: 619-291-1948
EIN: 16-1387862

WHISARD ID: 1684082

FLSA NARRATIVE REPORT

COVERAGE:

Quest Diagnostics Clinical Laboratories, Inc., doing business as Quest Diagnostics, was incorporated in the State of Delaware on or about February 13, 1976. (*See* Exhibit C-4.) Stephen Rusckowski is the Firm's President and Chief Executive Officer. (*See* Exhibit C-2e.) Dan Stanzione is the Firm's Lead Independent Director and Non-Executive Chairman of the Board. (*See* Exhibit C-2d.) The Firm is in the business of providing diagnostic testing services, diagnostic products, clinical trials testing, healthcare IT solutions, and wellness and risk management services. (*See* Exhibit C-2.) The Firm's corporate office and headquarters are located at 3 Giralda Farms, Madison, NJ 07940. (*See* Exhibits C-2a and C-4.) The Firm's Human Resources Department is located at 8401 Fallbrook Avenue, West Hills, CA 91304. The Firm has over 2,000 branch establishments nationwide, including 16 branch establishments in the County of San Diego. (*See* Exhibits C-2b and D-10.) The Firm employs over (b) (4) employees nationwide, and approximately (b) (4) employees in the San Diego area, including phlebotomists, couriers and lab technicians. (*See* Exhibits A-0, C-3 and C-6.) Other than the Frost Street location (the subject of this investigation), no physical investigation was made of the Firm's branch establishments. (*See* Exhibit E-1.) Stephen Rusckowski, the Firm's President, makes decisions regarding financial matters, controls employment decisions, supervises employees and is primarily responsible for the day-to-day operations of the Firm. Mr. Rusckowski is considered an employer within the meaning of Section 203(d) of the Fair Labor Standards Act ("FLSA").

On March 20, 2013, an initial conference was held at the Firm's branch establishment located at 7910 Frost Street, Suite 180, San Diego, CA 92123, with WHI (b) (6), (b) (7)(C), Donna Martinez, Group Lead, and Rosa Gulyas, Patient Service Supervisor, who participated via teleconference. (*See* Exhibits

C-1 and D-6.) The Firm's representatives informed WHI (b) (6), (b) (7)(C) that the Firm's corporate office is located in Madison, New Jersey and its Human Resources Department is located in West Hills, California. (See Exhibit C-1.) The investigation was coordinated through Eve Vandewiele, Human Resources Manager, and Megan Bassler, Senior Human Resources Generalist, both of whom work in the Firm's Human Resources Department in West Hills, Los Angeles. The Firm's representatives provided financial information indicating that the Firm's annual dollar volume was (b) (4) in the first quarter of 2013, (b) (4) in 2012 and (b) (4) in 2011. (See Exhibits C-5 and C-6.) The Firm's employees, including Eve Vandewiele and Megan Bassler, make telephone calls to the corporate office in New Jersey on a regular and recurring basis each workweek. The Firm meets the requirements for enterprise coverage under Section 203(s)(1)(A) of the Fair Labor Standards Act ("FLSA").

(b) (7)(E) (See Exhibit D-1.) The Northern New Jersey District Office is the MODO and the MODO manager is District Director Joseph Petrecca. (b) (7)(E)

(See Exhibit D-1.)

This was a FLSA Nursing Mother investigation, limited in scope to (b) (6), (b) (7)(C) (b) (7)(E) the Firm (i) failed to provide (b) (6), (b) (7)(C) with a space free from intrusion and (ii) failed to provide sufficient break time for the purpose of lactation breaks, and covers the period from August 1, 2012 through December 31, 2012. (See Exhibit E-1.) (b) (7)(E) (See Exhibit D-11.)

EXEMPTIONS:

This investigation was limited to a review of the Firm's compliance with Section 207(r) of the FLSA (break time for nursing mothers). No determination was made with respect to the exempt status of any of the Firm's employees.

STATUS OF COMPLIANCE:

This investigation was initiated as a result of (b) (7)(E) the Firm failed to provide a space free from intrusion and failed to provide sufficient break time for

one of its employees who was a nursing mother. As discussed below, insufficient evidence exists (b) (7)

PRIOR HISTORY:

A review of the WHISARD system revealed that the Firm has been the subject of approximately 21 prior investigations from 1997 through 2011. (See Exhibit D-2.) During the past five (5) years, the Firm has been the subject of five (5) investigations that revealed violations of the FLSA or FMLA. (See Exhibit D-2.) None of the prior investigations involved issues related to Section 207(r) of the FLSA.

SECTION 206: This investigation was limited to a review of the Firm's compliance with Section 207(r) of the FLSA (break time for nursing mothers). No determination was made with respect to the Firm's status of compliance with this Section of the FLSA.

SECTION 207: No violation of this Section was found during the investigation period. Insufficient evidence exists (b) (7)(E) the Firm (i) failed to provide (b) (6), (b) (7)(C) with a space free from intrusion and (ii) failed to provide sufficient break time for the purpose of lactation breaks. (b) (6), (b) (7)(C) works as a phlebotomist for the Firm. (See Exhibit B-1.) (b) (6), (b) (7)(C) primary work location is 7910 Frost Street, Suite 180, San Diego, CA. (See Exhibit B-1.) However, during the time (b) (6), (b) (7)(C) required lactation breaks, (b) (6), (b) (7)(C) also worked at approximately seven (7) other locations in the County of San Diego. (See Exhibits B-1 and D-4.) (b) (6), (b) (7)(C) returned from maternity leave (b) (6), (b) (7)(C) (See Exhibit B-1.) Most of the branch establishments (b) (6), (b) (7)(C) worked at had an employee break room that (b) (6), (b) (7)(C) was permitted to use for lactation breaks. (See Exhibit B-1.) In those locations without an employee break room, (b) (6), (b) (7)(C) was permitted to use an empty patient room. (See Exhibit B-1.)

UNDUE HARDSHIP: Since the Firm is an employer with more than 50 employees, the Firm is not subject to the undue hardship exemption set forth in Section 207(r)(3) of the FLSA.

ADEQUACY OF BREAK TIME: Section 207(r)(1)(A) requires an employer to provide "a reasonable break time for an employee to express breast milk." (b) (6), (b) (7)(C) (b) (7)(E) (b) (6), (b) (7)(C) was not provided with sufficient break time for (b) (6), (b) (7)(C) lactation breaks. (See Exhibit B-1.) (b) (6), (b) (7)(C) indicated (b) (6), (b) (7)(C) felt pressure to stay within (b) (6), (b) (7)(C) 15 minute rest break and to not go beyond this timeframe, since the breaks are

staggered and (b) (6), (b) (7)(C) co-workers could not take a break until (b) (6), (b) (7)(C) returned. (See Exhibit B-1.) (b) (6), (b) (7)(C) also stated that on several occasions (b) (6), (b) (7)(C) did use more than (b) (6), (b) (7)(C) 15 minute rest break, and (b) (6), (b) (7)(C) was required to clock out on those occasions. (See Exhibit B-1.) (b) (6), (b) (7)(C) did not inform (b) (6), (b) (7)(C) immediate supervisor or the group lead that the duration of (b) (6), (b) (7)(C) breaks was inadequate. (See Exhibit B-1.) Further, (b) (6), (b) (7)(C) stated that no one ever told (b) (6), (b) (7)(C) could not take as much time as (b) (6), (b) (7)(C) needed and likewise no one ever told (b) (6), (b) (7)(C) to hurry up and get back to work. (See Exhibit B-1.)

ADEQUACY OF SPACE PROVIDED: Section 207(r)(1)(B) requires an employer to provide “a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk.” WHI (b) (6), (b) (7)(C) toured the Frost Street establishment on March 20, 2013, and observed the employee break room (b) (6), (b) (7)(C) used for lactation breaks. (See Exhibit C-1.) The room has a door with no locking mechanism, a table with several chairs, electrical outlets, a small refrigerator and a microwave oven. (See Exhibit C-1.) Immediately outside of the employee break room there is a sink for employees to wash dishes or other items. (See Exhibit C-1.) The space provided by the Firm generally complies with the requirements in Section 207(r)(1)(B). However, (b) (6), (b) (7)(C) (b) (7)(E) the space was not “free from intrusion.” (See Exhibit B-1.) Since the door to the break room does not lock, (b) (6), (b) (7)(C) was provided with a sign to hang on the outside of the door that stated “Knock Before Entering.” (See Exhibits B-1, C-1 and D-7.) (b) (6), (b) (7)(C) (b) (7)(E) the sign was insufficient to ensure (b) (6), (b) (7)(C) privacy during lactation breaks, and that (b) (6), (b) (7)(C) was frequently interrupted by co-workers. (See Exhibit B-1.) (b) (6), (b) (7)(C) did not communicate this concern to Rosa Guylas, (b) (6), (b) (7)(C) immediate supervisor, or to Donna Martinez, the Group Lead. (See Exhibits B-1, C-1 and D-7.) During the initial conference, Donna Martinez stated that (b) (6), (b) (7)(C) frequently forgot to put the sign on the door, forgot to take the sign down when (b) (6), (b) (7)(C) was finished with (b) (6), (b) (7)(C) lactation breaks, or would simply instruct co-workers to come in if they knocked on the break room door while (b) (6), (b) (7)(C) was taking (b) (6), (b) (7)(C) lactation breaks. (See Exhibits B-1, C-1 and D-7.) (b) (6), (b) (7)(C) contacted the Human Resources department in West Hills on January 4, 2013, to communicate (b) (6), (b) (7)(C) concerns that (b) (6), (b) (7)(C) co-workers were displeased with (b) (6), (b) (7)(C) use of the break room. (See Exhibits B-1 and D-7.) According to (b) (6), (b) (7)(C) immediate supervisor, (b) (6), (b) (7)(C) received a complaint from one of (b) (6), (b) (7)(C) coworkers because (b) (6), (b) (7)(C) came into the break room while the other employee was eating lunch and started to use (b) (6), (b) (7)(C) breast pump in front of the other employee while (b) (6), (b) (7)(C) was eating. (See Exhibit D-7.)

Based on the foregoing, insufficient evidence exists (b) (7)(E) and no violation of Section 207(r) was found during the investigation.

SECTION 211: This investigation was limited to a review of the Firm's compliance with Section 207(r) of the FLSA (break time for nursing mothers). No determination was made with respect to the Firm's status of compliance with this Section.

SECTION 212: No violation of this Section was found during the investigation. The Firm does not employ individuals under the age of 18.

DISPOSITION:

On April 22, 2013, a final conference was held via teleconference with WHI (b) (6), (b) (7)(C) Eve Vandewiele, Human Resources Manager, and Megan Bassler, Senior Human Resource Generalist, both of whom participated from the Firm's Human Resources Department in West Hills, CA. WHI (b) (6), (b) (7)(C) discussed the purpose of the investigation, explained the period of investigation and reviewed the steps that were taken during the investigation. WHI (b) (6), (b) (7)(C) provided the Firm with technical assistance regarding the minimum wage, overtime, record keeping and child labor requirements of the Fair Labor Standards Act. Further, WHI (b) (6), (b) (7)(C) discussed the statutory requirements related to break time for nursing mothers, and recommended that the Firm treat this as an interactive process in the future in order to ensure employees who require lactation breaks are afforded a reasonable amount of break time as well as to ensure the steps taken by the Firm to provide a space free from intrusion are meeting the employee's needs. The Firm's representatives indicated they understood these requirements and agreed to future compliance. WHI (b) (6), (b) (7)(C) advised the Firm that the investigation revealed no apparent violations of Sections 206, 207, 211 or 212 or the Act, and encouraged the Firm to continue to remain in compliance.

WHI (b) (6), (b) (7)(C) provided the Firm with technical assistance related to the requirements of the FMLA and provided the Firm with a copy of the DOL FMLA 2008 Regulation and 2013 Regulation: Side-By-Side Comparison of Current/Final Regulations. WHI (b) (6), (b) (7)(C) advised the Firm that its current FMLA policy, which was last updated in April of 2011, does not incorporate the recent statutory amendments which became effective on March 8, 2013. In particular, the Firm's policy fails to incorporate the recent changes related to Qualifying Exigency Leave and Military Caregiver Leave. (See Exhibits D-8d to D-8e, D-11 and D-12.) The Firm's representatives indicated the corporate office is currently in the process of updating

this policy, and anticipates the new FMLA policy will be made available to employees on or about April 30, 2013.

(b) (7)(E)

(See Exhibit D-13.)

(b) (6), (b) (7)(C) NOTIFICATION: (b) (6), (b) (7)(C) was informed of the outcome of the investigation on April 22, 2013. (b) (6), (b) (7)(C) was informed of (b) (6), (b) (7)(C) rights under Section 216(b) of the FLSA. Based on guidance from Richard Longo, Director of Enforcement, (b) (6), (b) (7)(C) was not referred to the ABA Referral Program. (See Exhibit E-2.)

The following publications were mailed to the Firm's Frost Street location prior to the initial conference: WH Publication 1282 (HRG); Fact Sheet #28D Employer Notification Requirements Under the FMLA; Fact Sheet #44 Visit to Employers; Fact Sheet #73 Break Time for Nursing Mothers Under the FLSA; and Fact Sheet #77a Retaliation Under the FLSA. The following publications were emailed to Eve Vandewiele, Human Resources Manager, on March 21, 2013: WH Publication 1282 (HRG) and Fact Sheet #73 Break Time for Nursing Mothers Under the FLSA.

RECOMMENDATIONS:

The Firm is currently in compliance with the provisions of the FLSA and has agreed to maintain future compliance. WHI (b) (6), (b) (7)(C) conducted an FMLA policy review and found that the Firm's policy has not been updated to reflect the recent statutory amendments which became effective on March 8, 2013. (See Exhibits D-11 and D-12.) The Firm is currently in the process of updating its FMLA policy and anticipates this process will be completed no later than April 30, 2013. (b) (7)(E) WHI (b) (6), (b) (7)(C) recommends the case be administratively closed with no further action.

(b) (6), (b) (7)(C)

Wage & Hour Investigator

April 23, 2013

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1708533 Originating District: Phoenix District Office
Local Filing Number: 2013-279-09106 Investigating District: Phoenix District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 09/27/2013
Assignment Date: 09/27/2013

Employer Information

Trade Name: The Phoenix Zoo Legal Name: Arizona Zoological Society
Address: 455 N Galvin Parkway EIN: 86-0174843
County: Maricopa
NAICS Code: 712130
Phoenix, AZ 85008 No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 05/01/2013 BNPI:
To: 12/04/2013 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Compliance (no violations found) Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

12 HRS: FLSA ent coverage under Sect 3(s)(1)(A): firm non-profit but has over (b) (4) in retail and food sales. Inv limited to nursing mothers, Section 7(r): compliance found. FC on 12/04/13 at est w/Stephanie Baldwin. Requirements explained in detail. Ms Baldwin ATC. Rec Admin Closure, no further action.

WHI Signature: _____ Date: 12/11/2013

Reviewed By: _____ Date: _____

The Phoenix Zoo Case ID: 1708533

Corporate Office:

Arizona Zoological Society
Db: Phoenix Zoo
455 N. Galvin Pkwy
Phoenix, AZ 85008
EIN: 86-0174843

Case #1708533

Point of Contact:

Stephanie Baldwin
Director of Human Resources
455 N. Galvin Pkwy
Phoenix, AZ 85008
Phone: 602-273-1341

FLSA-Nursing Mother Narrative

Coverage:

The subject firm operates as a zoo open to the general public. The organization operates as a non-profit corporation and was incorporated in the State of Arizona on 05/03/1961. The zoo first opened in Phoenix, Arizona in November of 1962. The ADV for the organization was: (b) (4) in FY ending 06/30/2010, (b) (4) in FY ending 06/30/2011 and approximately (b) (4) in FY ending 2012. The corporate officers are: Norberto Castro, CEO and Bonnie Mendoza, CFO. (See Exhibits: C-1, C-2)

This organization operates primarily as a non-profit organization committed to animal conservation efforts and providing educational information to the public regarding animals, their habitats and conservation. In addition to the non-profit educational activities of this organization, there is also a business component that results in approximately (b) (4) of retail and food sales each year.

For FY ending June 30, 2011, the Phoenix Zoo had a business income of (b) (4) from retail and food sales and for FY ending June 30, 2012 the Phoenix Zoo had a business income of (b) (4) from retail and food sales. (Exhibit: C-2) Employees of the firm handle goods that have moved in interstate commerce. Enterprise coverage under section 3(s)(1)(A) of the FLSA applies for all employees. (29 CFR, Part 779.214) This case was a limited investigation under the Patient Protection and Affordable Care Act (PPACA) requirements for nursing mothers. The investigation was limited to the period of time the current nursing mothers have needed the accommodations required under the PPACA. Investigative period 05/01/2013 to 12/04/2013.

Exemptions:

13(a)(1) applicable:

(b) (6), (b) (7)(C)

Director of Communications (b) (4) per year (Exhibit: B-3)

(b) (6), (b) (7)(C)

Special Events Manager (b) (4) per year (Exhibit: B-4)

The above individuals were found to be exempt from Section 7 of the FLSA. As these employees are exempt from Section 7, they would also be exempt from the protections of Section 7(r), which are the requirements for providing reasonable break time and accommodations for nursing mothers.

The Phoenix Zoo
Case #1708533

Status of Compliance:

Prior History: None found.

MODO Instructions: The only location for this business is at the above address: 455 N. Galvin Pkwy
Phoenix, AZ 85008.

Status of Compliance: This investigation was initiated (b) (7)(E) (b) (6), (b) (7)(C)
(b) (6), (b) (7)(C) has worked for the Phoenix Zoo for (b) (6), (b) (7)(C) (b) (7)(E)
violations of the PPACA due to the firm not providing a private location free from intrusion from co-workers. (See WHISARD
(b) (7)(E) Information Form)

(b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) was provided an area for expressing (b) (6), (b) (7)(C) breast milk but that the primary area provided to (b) (6), (b) (7)(C) had managers and co-workers interrupting (b) (6), (b) (7)(C) on a regular basis. (See WHISARD (b) (7)(E) Form)

This investigation found that the employer had fixed the violations initially (b) (7)(E) (b) (6), (b) (7)(C) A list of all current employees nursing during work was obtained and these employees were interviewed. (Exhibits: B-1 to B-4) The interviews

found that the employees are being given the required break times for nursing and the required private space is being provided.

The zoo was toured and each private space used by a nursing mother was checked to ensure it allowed sufficient room for the nursing mother and that it was shielded from view from all co-workers. The areas were also checked to ensure that there would be privacy from intrusion. This tour was conducted by Stephanie Baldwin, HR Director, and during the tour she was told that when more than one mother is nursing, she will need to consider the fact that the requirement is to provide a space for the nursing mother that is free from any intrusion from co-workers. There was one small room that she had intended to be shared by two nursing mothers and Ms. Baldwin was reminded that each nursing mother needed to be given a private space for nursing.

Ms. Baldwin provided a copy of the information that is provided to all supervisors and managers that addresses the break time rights for nursing mothers. (Exhibit: D-1) She stated there are no other written instructions or information provided to managers or to employees regarding the policy for nursing mothers at the Phoenix Zoo.

Section 7 – Overtime and Nursing Mother Requirements:

No violations were identified.

Section 12 - Youth Labor:

No violations were identified during this investigation.

Disposition:

On 12/04/2013, the initial conference was held at the establishment with Stephanie Baldwin, HR Director and Mr. Bill Allen, legal counsel for the Phoenix Zoo. During this meeting, Ms. Baldwin explained that she does understand the requirements set forth in the PPACA and that the Phoenix Zoo does allow nursing mothers break time whenever they need it. Ms. Baldwin stated that the break time is paid and that there are currently no restrictions on the amount of break time allowed for expressing milk. Ms. Baldwin provided the written instructions that are sent to the managers and supervisors regarding the PPACA requirements for nursing mothers. (Exhibit: D-1)

The Phoenix Zoo

Case #1708533

Ms. Baldwin provided the names of all the current nursing mothers working for the Phoenix Zoo and a description of the space where these employees are able to express their breast milk. (Exhibit: D-2) These employees were interviewed and a tour of the establishment was taken.

Violations were not found during this investigation. Ms. Baldwin had stated that she was aware of a number of women that were going to be returning to work after giving birth and she expected about 6 additional employees to fall into the nursing mother category in the coming 4 or 5 months. During the tour, Ms. Baldwin mentioned a couple of spaces might be shared by nursing mothers in the future. The requirement that nursing mothers be provided a space that is free from intrusion was emphasized to Ms. Baldwin and that if she did not provide a separate private area for each nursing mother the free from intrusion requirement might be violated. Ms Baldwin stated that she understands that the space must be private and free from intrusion.

After the tour of the establishment, a final conference was held with Ms. Baldwin. Fact Sheet #73 was provided to Ms. Baldwin and briefly reviewed with her. The requirement for a space for expressing milk that must be available when needed by the nursing mother was reviewed. It was emphasized that the space must be shielded from view and must be free from intrusion by co-workers or managers.

(b) (6), (b) (7)(C) notification:

During the investigation, (b) (6), (b) (7)(C) was interviewed. During the interview, (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) does feel that (b) (6), (b) (7)(C) now has adequate space for expressing (b) (6), (b) (7)(C) breast milk and that (b) (6), (b) (7)(C) does receive breaks whenever (b) (6), (b) (7)(C) needs them for this purpose. (b) (6), (b) (7)(C) was told that if (b) (6), (b) (7)(C) has any problems with receiving adequate space or break time to express (b) (6), (b) (7)(C) milk, to call this investigator.

Employer Point of Contact:

Stephanie Baldwin: Phone: 602-273-1341

Recommendation:

It is recommended that this case be administratively closed.

(b) (6), (b) (7)(C)

Investigator

The Phoenix Zoo Case ID: 1708533

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1717123 Originating District: West Covina District Office
Local Filing Number: 2014-186-07082 Investigating District: West Covina District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 01/15/2014
Assignment Date: 02/06/2014

Employer Information

Trade Name: First Transit Legal Name: First Transit, Inc.
Address: 303 N. Allen Avenue EIN: Dropped
Pasadena, CA 91106 County: Los Angeles
NAICS Code: 485510
No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 02/12/2012 BNPI:
To: 02/06/2014 Reinvestigation: ☒
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Full Investigation Future Compliance Agreed: ☐
Compliance Status: Not Applicable Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

3.5 Hours No Coverage. The case was set up as a nursing mothers (b) (7)(E). The EE (b) (7)(E) (b) (6), (b) (7)(C) was not prov. an adequate place to express breast milk as (b) (6), (b) (7)(C) is a bus driver. Numerous attempts were made to contact the EE with no success. WHI (b) (6), (b) (7)(C) even TR to EEs listed address. Statute of limitations has now run out under the FLSNM regulations as EE child is now over 1 year old. WHI (b) (6), (b) (7)(C) recommends that the case be closed administratively with no further action.

WHI Signature: _____ Date: 03/27/2014

Reviewed By: _____ Date: _____

Memorandum to File

ER Name : First Transit

Case ID: # 1717123

ER Address: 303 N. Allen Avenue – Pasadena, California 91106

Date: March 27, 2014

Re: Closing Case / Dropping Case

On February 6, 2014 WHI (b) (6), (b) (7)(E) was assigned a nursing mothers (b) (7)(E). On the same day WHI (b) (6), (b) (7)(E) began to do research on the firm and called and left messages for the EE to call WHI (b) (6), (b) (7)(E) back regarding (b) (6), (b) (7)(E). The case was set up in the West Covina District Office as a full investigation of First Transit in regards to their policies with the nursing mothers' regulations put into place. (b) (6), (b) (7)(C) (b) (7)(E) (b) (6) was not being offered an adequate place for (b) (6) to express milk while at work as (b) (6) is a bus driver.

The firm is a bus company that provides transportation services in the County of Los Angeles. A history search was done in WHISARD and WHI (b) (6), (b) (7)(E) found that the ER has had (b) (7)(E) (See Exhibit D-2). On February 13, 2014 WHI (b) (6), (b) (7)(C) called (b) (6), (b) (7)(C) and left several messages for (b) (6), (b) (7)(C) to call WHI (b) (6), (b) (7)(E) back to discuss case. None of the calls were ever returned to WHI (b) (6), (b) (7)(E) so a WH-41 was sent out to the employee to contact WHI (b) (6), (b) (7)(E) (See Exhibit D-3).

On February 18, 2013 WHI traveled to the address listed on (b) (6), (b) (7)(C) for the employee and no one answered the door. WHI (b) (6), (b) (7)(E) left a business card at the home with the contact information. Another call was made to (b) (6), (b) (7)(C) with no success. On February 19, 2014 WHI (b) (6), (b) (7)(E) once again called (b) (6), (b) (7)(C) and someone would answer the phone but would not speak or answer. The case was put on hold as WHI (b) (6), (b) (7)(E) had to travel to Hope, Arkansas to assist the National Office with a poultry initiative.

On March 7, 2014 WHI once again tried to contact (b) (6), (b) (7)(C) and no one answered the phone. WHI (b) (6), (b) (7)(E) had a conversation with Assistant District Director Paul Chang on March 20, 2014 about the facts of the case. WHI (b) (6), (b) (7)(E) revealed that (b) (6), (b) (7)(C) was un-locatable and numerous attempts were made to contact (b) (6), (b) (7)(C) with no success. WHI (b) (6), (b) (7)(E) disclosed that the statute of limitations for Wage and Hour to pursue a case had now expired as it appears that (b) (6), (b) (7)(C) baby was born (b) (6), (b) (7)(C). Assistant District Director recommended that WHI (b) (6), (b) (7)(E) submit the case as statute had now expired.

(b) (7)(E) (See Exhibit D-1). No actual

First Transit Case ID: 1717123

investigation was conducted but for the purposes of submitting the case file (b) (7)(E) .

WHI recommends the file be administratively closed with no further action (b) (7)(E) .

(b) (6), (b) (7)(C)

Wage-Hour Investigator (WHI)
Long Beach Field Office
March 27, 2014

WHISARD Compliance Action Report

U.S. Department of Labor Wage and Hour Division

Case ID: 1719687 Originating District: Los Angeles District Office
Local Filing Number: 2014-231-07472 Investigating District: Los Angeles District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 02/10/2014
Assignment Date: 02/11/2014

Employer Information

Trade Name: Green Lien Collections, Inc. Legal Name: Green Lien Collections, Inc.
Address: 16530 Ventura Blvd. Ste 408 EIN: 80-0288709
Encino, CA91436 County: Los Angeles
NAICS Code: 56144
No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 08/05/2013 BNPI:
To: 11/15/2013 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

FMLA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FMLA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

(b) (7)(E) ER did not provide adequate private location for lactation purposes and as a result of that, (b) (6), (b) (7)(E) had to pump in (b) (6), (b) (7)(E) car. (b) (7)(E) most rooms at establishment are under camera surveillance. (b) (6), (b) (7)(E) FLSA Sect.7(r)(1)(B) found. ER ATC in the future by providing rooms for lactation free from view, intrusion and camera surveillance. ER indicated would incorporate this provision in (b) (6), (b) (7)(E) company's handbook. Recommend case be closed (b) (7)(E)

WHI Signature: _____ Date: 08/11/2014

Reviewed By: _____ Date: _____

FLSANM NARRATIVE REPORT

COVERAGE:

Green Lien Collections, Inc., dba.: same, is a medical billing and collections agency for Worker's Compensation physicians. Green Lien Collections, Inc. is set up as a corporation and according to the California Secretary of State website; it was incorporated on October 14, 2008 (Ex. C-3). The company's shareholders are as follows: Patrick Nazemi, Owner/CEO, Deborah Perez, President, and Andrew McNeil, CFO. The employer's attorney, Mr. Douglas B. Vanderpool did not provide me with the percentage ownership breakdown of the shareholders or with the company's EIN no. The EIN number was obtained from the complainant.

Mr. Douglas B. Vanderpool, the employer's attorney, stipulated to coverage on behalf of the employer (Ex. C-2). Coverage under Section 3(s)(1) applies to all employees of the firm. The firm meets the Annual Dollar Volume requirement in gross sales, employs two or more full time employees, and its employees handle goods that have moved in interstate commerce such as the black telephone units which they use at the office made by Araya and manufactured in China (Ex. C-1).

This investigation was limited to the time when (b) (6), (b) (7)(C) was covered under the Break Time for Nursing Mothers provision of the FLSA, beginning on August 5, 2013 and ending on 11/15/13. (b) (6), (b) (7)(C) (Ex. B-6).

MODO: The Los Angeles District Office is the MODO Office for this employer.

STATUS OF COMPLIANCE:

Prior History: Green Lien Collections, Inc. has not been the subject of an investigation by the Wage and Hour Division in Los Angeles, CA.

The investigation initiated as (b) (7)(E) (b) (6), (b) (7)(C) (b) (7)(E) (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) (b) (7)(E) when (b) (6), (b) (7)(C) told (b) (6), (b) (7)(C) then supervisor, (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) was a lactating mother. (b) (6), (b) (7)(C) gave (b) (6), (b) (7)(C) two options to be used as lactation rooms; one was to use the bathroom on their floor next to their office and the other one to use the bathroom downstairs on the first floor. (b) (6), (b) (7)(C) (b) (7)(E) most rooms at the office are under camera surveillance and the only place (b) (6), (b) (7)(C) could express (b) (6), (b) (7)(C) breast milk was in (b) (6), (b) (7)(C) car in the building's parking lot. (b) (6), (b) (7)(C) (b) (7)(E) (b) (6), (b) (7)(C) a self-employed (b) (6), (b) (7)(C) who owns a car wash at the building, assisted (b) (6), (b) (7)(C) in providing (b) (6), (b) (7)(C) with a somewhat private location for (b) (6), (b) (7)(C) to express (b) (6), (b) (7)(C) milk in the parking lot. (b) (6), (b) (7)(C) (b) (7)(E) (b) (6), (b) (7)(C) A tour of the establishment, employee interviews and conversations with Deborah Perez, the President, indicated that most rooms at the establishment were under camera surveillance. I interviewed the self-employed car wash owner, and (b) (6), (b) (7)(C) indicated to me that (b) (6), (b) (7)(C) assisted (b) (6), (b) (7)(C) several times a week so (b) (6), (b) (7)(C) could express (b) (6), (b) (7)(C) milk in a somewhat private location in the parking lot [Ex. B-2 – B-2(a)].

EXEMPTIONS:

(b) (6), (b) (7)(C) is a non-exempt employee paid on an hourly basis and is therefore subject to Section 7 of the FLSA.

Section 6 (Minimum Wage): Thorough employee interview statements and a review of the employer's time and pay records for (b) (6), (b) (7)(C) and others, the investigation did not reveal minimum wage violations [Ex. B-1, B-3, B-4, B-6, B-7, A-1 – A-1(0) and D-8 – D-8(f)].

Section 7 (Overtime): Thorough employee interview statements and a review of the employer's time and pay records for (b) (6), (b) (7)(C) and others, the investigation did not reveal overtime violations. A thorough review of (b) (6), (b) (7)(C) time and pay records indicates (b) (6), (b) (7)(C) was paid at time and a half of her hourly rate of pay for hours worked in excess of 40 in a workweek [Ex. B-1, B-3, B-4, B-6, B-7, A-1 – A-1(0) and D-8 – D-8(f)]. If employees miss time during the week, they fill out a make-up time request form which allows them to make up the time lost in the same workweek (Ex. D-10). Allegedly, this form exempts the employer from paying daily overtime. I reviewed the time/pay records for (b) (6), (b) (7)(C) when (b) (6), (b) (7)(C) filled out that form and (b) (6), (b) (7)(C) was paid for (b) (6), (b) (7)(C) overtime hours worked after 40 hours per week each week [Ex. A-1 – A-1(0)].

Section 7(r)(1)(A) – Reasonable Time Break: No violations found. The employer allowed (b) (6), (b) (7)(C) to use (b) (6), (b) lunch breaks and rest periods to express (b) (6), (b) milk.

Section 7(r)(1)(B) – A Place, other than a Bathroom , Shielded from View and Free of Intrusion: A violation was found. The employer's attorney provided me with a photocopy of a note signed by (b) (6), (b) (7)(C) on which (b) (6), (b) acknowledges that the employer can make reasonable efforts to provide an

adequate room for lactation purposes (Ex. D-7). However, the employer did not provide me with any documentation which showed to me which rooms had been made available for lactation purposes to (b) (6), (b) (7)(C) and which they were free of camera surveillance. I interviewed an employee who is currently lactating who indicated to me that (b) (6), (b) (7)(C) supervisor, had told (b) (6), (b) that if (b) (6), (b) wanted to express (b) (6), (b) milk (b) (6), (b) could do so, but in (b) (6), (b) car (back of Exhibit B-1).

I interviewed (b) (6), (b) (7)(C), the supervisor, and (b) (6), (b) indicated to me that (b) (6), (b) does not know if the company has a nursing mother's policy or not. (b) (6), (b) further indicated to me that when (b) (6), (b) reported to (b) (6), (b) for a while, (b) (6), (b) never instructed (b) (6), (b) to use any of the rooms in the office to express (b) (6), (b) milk (back of Ex. B-4). I interviewed Deborah Perez, the company's President, and she indicated to me that she was not aware that (b) (6), (b) (7)(C) was pumping in (b) (6), (b) car (Ex. B-5).

Section 11 (Record Keeping): The investigation did not reveal recordkeeping violations. The employer maintained time and pay records on her employees and made those records requested available for review.

Section 12 (Child Labor):

There were no apparent child labor issues at this establishment. A tour of the establishment and employee interview statements did not indicate the employment of minors at this establishment (Ex. B-1 – B-7).

(b) (6), (b) (7)(C) was notified of the investigation findings on Tuesday, May 20, 2014 via a telephone call.

DISPOSITION:

The final conference was held on Friday, May 23, 2014 at the employer's establishment. Present at the conference were Ms. Deborah Perez, President, and I, WHI (b) (6), (b) (7)(C). I explained to her the requirements of FLSA and enterprise coverage as it applied to her establishment including MW, OT, CL and RK. I then explained to her the Break Time for Nursing Mothers provision of the FLSA. I asked Ms. Perez if she could provide me with any documentation which indicated specifically which rooms the complainant had been instructed to use for lactation purposes and she told me that there was nothing in writing that she could find. I asked her how she intended to come into compliance and Ms. Perez showed me a draft of a letter she was going to send her employees regarding which rooms were available for lactation purposes. She identified for me on that list the rooms which were under camera surveillance and I told her that those rooms could not be used for lactation purposes. She then indicated to me that the rooms which were not under camera surveillance were the Human Resources office, her own office, the storage room area and the rooms at the clinic downstairs on Ste. 100 at Advance Orthopedics. I asked if anybody had ever used the room downstairs as lactation room that I could interview and she said that nobody had so far.

Ms. Perez agreed to future compliance with the Break Time for Nursing Mothers provision of the FLSA and agreed to make rooms available to lactating mothers which are shielded from view and free from intrusion and understood that a restroom or a person vehicle does not qualify as reasonable accommodations for lactation purposes. She also indicated she would make the provision part of the company's handbook and that she would immediately send an e-mail out to management to discuss the Break Time for Nursing Mothers provision of the FLSA.

PUBLICATIONS:

The following publications were provided to the employer on 05/16/14 (Ex. E-1):

WH-1282, Fact Sheet #44, Fact Sheet #77A, Fact Sheet #22, Fact Sheet #73, 29 CFR 825, WH-1467, WH-1415, Part 580, Part 541, WH-1261, Part 778, and WH-1330.

RECOMMENDATIONS:

I recommend that this case be administratively closed (b) (7)(E)

(b) (7)(E) No further action is necessary.

(b) (6), (b) (7)(C)
Wage and Hour Investigator
May 30, 2014

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1723658 Originating District: West Covina District Office
Local Filing Number: 2014-186-07171 Investigating District: West Covina District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 03/21/2014
Assignment Date: 03/25/2014

Employer Information

Trade Name: Neptune Foods Legal Name: Fisherman's Pride Processors Inc.
Address: 4510 S. Alameda St EIN: 95-4180539
County: Los Angeles
NAICS Code: 424460
No. Of Employees: (b) (4)
Los Angeles, CA90058

Investigation Information

Period Investigated From: 04/06/2012 BNPI:
To: 04/05/2014 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Full Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	
Total Violations Under FLSNM:	2						\$0.00

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

39.50Hrs. Full inv, (b) (7)(E) . FLSA-NM: Ent Cov under 3(s)(1)(A), 50+ EEs, non-exempt (b) (6) child birth under 1 yr. (b) (6) was not provided breaks or private space to express milk: No apprt viol under FLSA Sec 6, 7(a)(1), 11, 12 found. Viol conf under 7(r). Concurrent FMLA inv under #1726716. FC held 6/11/14, ER ATC& provide (b) (6) breaks/private space. Pub given to ER: HRG, FS77A, #73

WHI Signature: _____ Date: 06/20/2014

Reviewed By: _____ Date: _____

Fisherman's Pride Processors Inc.
dba: Neptune Foods
4510 S. Alameda Street
Vernon, CA 90058
Tel: (323) 232-8300
Fax: (323) 232-8833
Email: info@neptunefoods.com
Website: <http://www.neptunefoods.com/>

Local File # 2014-186-07171
Case # 1723658
EIN: 95-4180539

FLSA NURSING MOTHER (FLSANM) NARRATIVE

COVERAGE

Fisherman's Pride Processors Inc. doing business as Neptune Foods operates as a food service company that processes and produces seafood items. Neptune Foods has been in operation since 1956 and is a California Corporation incorporated August 31, 1988 (see exhibits C.3). The production plant contains **150,000** square feet of production and office space, combined with **100,000** square feet of cold storage space (see exhibit D.2.a-D.2.g: internet research). (b) (4)

(see exhibit D.4).

Firm's officers include, Howard Choi, President; Hector Poon, Chief Operating Officer, Wales Yu, Secretary and Martin Poon, Production Manager. The firm's two owners include Ming Bin Kou and Ming Shin Kou. Mr. Martin Poon along with Elva Nunez, QC Manager and Personnel Supervisor oversee all employee issues (see exhibit C.2.a & B.3). Both meet the definition of a 3(d) employer of the enterprise as they make decisions in regards to wages paid, hours worked, leave, discipline, overall policies of the firm, and hiring/firing of employees (see exhibits B-1.a -B.6.b).

Employees of the firm regularly and recurrently handle goods that had moved in interstate commerce (see exhibits D.4: Pictures of Labels). The ADV for the last 3 years as reported in the firm's year-end earnings for: 2013 (b) (4); 2012 - (b) (4); and 2011- (b) (4). (Exhibits C-1, C-2) The firm employs over (b) (4) employees and operates 7 days a week (see exhibits E.4.a-a.f). All employees of the establishment are covered on an enterprise basis under Section 3(s)(1)(a) for the entire investigative period.

FLSANM applies to employer with 50 or more employees, and only non-exemption employees are cover under the law. Both criteria are met in this investigation.

Prior History/ Associated/Linked: There is no prior FMLA or FLSA investigation of this firm. This is the first investigation of the firm, An FMLA investigation was initiated of this employer during this investigation see case #1726716

MODO: This is an enterprise which falls within the boundaries of the WCDO. No MODO communication was made since there are no additional locations.

Period of Investigation: April 6, 2012 through April 5, 2014.

EXEMPTIONS: Not reviewed during this investigation.

STATUS OF COMPLIANCE

Status: The investigation was initiated (b) (7)(E) (b) (6), (b) (7)(C)

(b) (7)(E) learned about (b) (6), (b) (7)(C) rights through a WIC flyer as employer failed to provide (b) (6), (b) (7)(E) any notice about (b) (6), (b) (7)(E) leave entitlement and rights (see exhibits B.5.c). (b) (6), (b) (7)(E) employer failed to provide the break times to express milk. In addition, employer failed to provide a private area to express milk, therefore (b) (6), (b) (7)(E) express milked in the public woman's lockers/restrooms (see exhibits B.5.a-b).

The initial conference took place on 4/11/14 at the establishment site as confirmed in the IC letter (see exhibits D.1.a). Mr. Martin Poon, Production Manager and Mr. Hector Poon, COO participated in the IC and provided requested information (see exhibits C.2.a-c). Mr. Poon invited Ms. Elva Nunez, QC Manager/Personnel Supervisor to participate in the meeting and described her as the floor manager that oversees the staff.

The firm's workweek is Monday through Sunday with the profile pay period covering 3/30/14-4/5/14 (see exhibits E.1.a-a.k: profile payroll). Mr. Poon said he was not aware of the legal requirements for employee that had the need to express milk, yet believed the company complied with all laws. During the tour of the establishment he claimed that if employees had a need to express milk, they used the woman's locker/restrooms during the company's designated break time and or lunch (see exhibits E.7..a-f; pictures). The employer and Ms. Nunez stated they were

unaware of (b) (6), (b) (7)(C) request to express milk.

Section 6 - Minimum Wage

No Violations. The lowest paid employee during the investigative period is paid (b) (4)/hour. Employees claimed to be paid for all hours of worked and recorded on the electrical swipe system (see exhibits B.1.-B.6 and E.1.a-a.k).

Section 7(a)(1) - Overtime

No Violations. The employer is in the practice of paying overtime after 8 hours in the day and 40 hours in the week. This was confirmed through payroll records reviewed and employees' statements (see exhibits E.1.a-a.k & E.3.a).

Section 7(r) of the Fair Labor Standards Act – Break Time for Nursing Mothers Provision

Section 7(r)(1)(A): Requires an employer to provide “a reasonable break time for an employee to express breast milk for (b) (6), (b) (7)(C) nursing child for 1 year after the child's birth each time such employee has need to express the milk”

The firm failed to provide “reasonable break time” for the employees that requested time to express milk. (b) (6), (b) (7)(C) returned to work on (b) (6), (b) (7)(C) and informed (b) (6), (b) (7)(C) immediate supervisor of (b) (6), (b) (7)(C) need to express milk. (b) (6), (b) (7)(C) was denied permission to take additional breaks and informed that (b) (6), (b) (7)(C) could only express (b) (6), (b) (7)(C) milk during the established 15-minute break or lunch period. (b) (6), (b) (7)(C) was unable to express (b) (6), (b) (7)(C) milk during the break period due to the shortness in time, thus resorted to using (b) (6), (b) (7)(C) lunch break to express it. Since (b) (6), (b) (7)(C) was unable to express (b) (6), (b) (7)(C) milk throughout the morning, (b) (6), (b) (7)(C) experience major pain and discomfort throughout (b) (6), (b) (7)(C) shift (see exhibit B.5.a-b).

Employer claimed that there were 4 employees that returned from maternity leave within the last year (see exhibits E.5.a-f). According to Mr. Poon, no employee had ever expressed the need to express milk. Mr. Poon claimed that all production employees were required to make direct request with immediate supervisors or QC Manager/Personnel Supervisor, Ms. Elva Nunez. Ms. Nunez claimed that employees' had the option to express milk and could do this with permission from there supervisors (see exhibits B.3.a). Yet, employees' statements do not correspond with Ms. Nunez statement. Employees that retuned from maternity leave had no knowledge of the company's policy. Most employees opted to dry out their milk due to the inconvenience of their job, express during designated breaks or avoid breastfeeding in general (see exhibits B.1.a-b, B.3.a-b, B.6.a-b).

Section 7(r)(1)(B): Requires employers to provide “a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk”.

There is 1 employee that has the need to express milk, yet investigation findings confirmed other employees were not aware of a designated place to express milk or take necessary breaks. Employees reported that they would see woman expressing their milk in the woman's locker rooms or restrooms. Management failed to provide employees a designate private area to express milk. Woman's locker rooms are located in a communal open space for female employees and are not shield from view or free from intrusion of coworkers.

Section 11 - Recordkeeping

No violation. Personal records are maintained for all employees. Payroll records and time records are accurate. Per site visit completed by WHI, posters stated employee rights under the Act are visible in accordance with 29 CFR 516.4.

Section 12 - Child Labor

No Violations. Per employee and employer interviews, minors were not employed during the investigative period.

DISPOSITION:

A final conference was held on 6/10/14 at the establishment with Martin Poon, Production Manager and Elva Nunez, representing the firm, and WHI (b) (6), (b) (7)(C) representing Wage Hour. Sections 6, 7, 11, 12, exemptions, and break time for nursing mothers regulations of the Fair Labor Standards Act were discussed. WHIs also discussed compliance with the Family Medical Leave Act as explored during this investigation.

WHIs stated that no violations were found for Section 6, 7(a)(1), 11, and 12. WHIs explained the investigation disclosed violations in regard to Section 7(r)(1) of the Act. Investigative findings confirmed that (b) (6), (b) (7)(C) was not allowed to take reasonable breaks to express milk nor provided with an adequate space shield from view and free from intrusions from coworkers. In addition, the company failed to comply with legal requirements for other woman that returned from maternity leave. Although employer has legal posters in display for the public, practices differ and employees (see exhibits D.3.a-e).

Mr. Martin Poon immediately agreed to correct this issue and designated the conference room for (b) (6), (b) (7)(C) to

extract (b) (6), (b) (7)(C) milk. The conference room is located in the main office and has an electrical outlet, tables, and enclosed secure doors with a private restroom located adjacent to the room. (b) (6), (b) (7)(C) reported (b) (6), (b) (7)(C) that immediately was informed of (b) (6), (b) (7)(C) right and able to extract (b) (6), (b) (7)(C) milk in this private area (see exhibits B.4). Communication was related by Ms. Elva Nunez, who informed (b) (6), (b) (7)(C) that she was not aware that (b) (6), (b) (7)(C) was expressing (b) (6), (b) (7)(C) milk. She did ask (b) (6), (b) (7)(C) to clock out of work as breaks were taken at a separate time than those provided to employees. (b) (6), (b) (7)(C) confirmed that (b) (6), (b) (7)(C) continued to receive (b) (6), (b) (7)(C) paid break and lunch period.

Mr. Poon stated that a written memo was created and placed throughout the establishment to inform female employees of their right to express milk and private room available (see exhibits E.6). This memo is written in English and Spanish (see exhibits E.6). (b) (6), (b) (7)(C) confirmed that (b) (6), (b) (7)(C) was able to express (b) (6), (b) (7)(C) milk upon request in a private room of the establishment. Mr. Poon assured that going forward all employees would be informed of their right to express milk upon their return from maternity leave to avoid any type miscommunication between floor managers and staff. He also agreed to include this topic in employee trainings that take place at least once a month.

Once future compliance was established, WHI (b) (6), (b) (7)(C) discussed compliance issues under the Family Medical Leave Act. WHI provided Fact Sheet #73 for his review and explained the regulations under Section 7 of the Act.

(b) (6), (b) (7)(C) NOTIFICATION:

(b) (6), (b) (7)(C) was advised of the results of this investigation on 6/10/14. (b) (6), (b) (7)(C) confirmed that at the present time (b) (6), (b) (7)(C) was on medical leave, yet confirmed that the company continued to offer (b) (6), (b) (7)(C) a private space to extract (b) (6), (b) (7)(C) milk. (b) (6), (b) (7)(C) was informed that a reasonable break time would be provided for 1 year after the child's birth.

PUBLICATIONS PROVIDED:

Handy Reference Guide
Fact Sheet #77A (Prohibiting Retaliation Under the Fair Labor Standards Act (FLSA))
Fact Sheet #44 (Visits to Employers)
Fact Sheet #73 (Break Time for Nursing Mothers under the FLSA)
WH 1318- Fair Labor Standards Act
Part 516 (29 CFR 516 Recordkeeping)
Part 785 (29 CFR 785 FLSA Hours Worked)

RECOMMENDATIONS:

(b) (7)(E) I recommend this case be administratively closed.

(b) (6), (b) (7)(C)

June 20, 2014

Wage and Hour Investigator

WHISARD Compliance Action Report

U.S. Department of Labor Wage and Hour Division

Case ID: 1730395 Originating District: San Francisco District Office
Local Filing Number: 2014-316-08661 Investigating District: San Francisco District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 05/28/2014
Assignment Date: 05/28/2014

Employer Information

Trade Name: Berkeley Food & Housing Project Legal Name: Berkeley Food and Housing Project
Address: 2362 Bancroft Way EIN: 94-2979073
County: Alameda
NAICS Code: 6242
Berkeley, CA94704 No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 08/19/2013 BNPI:
To: 05/28/2014 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

14.25 hrs. Spin off case from systemic FMLA review of ER. Individ. Cov. for (b) (6) ER viol, FLSNM, Section 7(r)(1)(B) by not providing a place to express breast milk shielded from view and free from intrusion. WHI (b) (6), (b) (7) toured est. and found an adequate space which ER agreed to use in future. ER will incl. FLNM in EE handbook and conduct internal audit of 4 other facilities and find suitable space. (b) (6), (b) (7)(E) due to perform issues (b) (6), (b) (7) retracted claim. ER ATC. Pubs. Rec admin closure

WHI Signature: _____ Date: 06/17/2014

Reviewed By: _____ Date: _____

Berkeley Food and Housing Project

Legal Name: Berkeley Food & Housing Project

DBA: Berkeley Food & Housing, BFHP

2362 Bancroft Way

Berkeley, CA 94704

Phone: 510.649.4965

DOL Case ID: 1730395

EIN: 94-2979073

Point of Contact: Terrie Light, Executive Director
2362 Bancroft Way
Berkeley, CA 94704
Phone: 510.649.4965
Email: tlight@hfhp.org

FLSA NARRATIVE

COVERAGE

Reason for the Investigation: This FLSA/FLSNM investigation is a spin-off case of a FMLA wrongful termination (b) (7)(E) case. WHI (b) (6), (b) (7) took a systemic approach to the FMLA case and found that an employee was terminated from (b) (6), (b) (7) position within a few months of returning from maternity leave. A FMLA case was not set up for (b) (6), (b) (7) because (b) (6), (b) (7) did not meet the FMLA eligibility requirements, as (b) (6), (b) (7) had worked for the employer for less than 12 months at the time (b) (6), (b) (7) requested pregnancy and maternity leave; however the employee alleged not having an adequate space to express milk. (b) (6), (b) (7)(C) (b) (7)(E) with the employer. Under FLSNM provisions of the FLSA, Section 7(r)(1)(B), (b) (6), (b) (7)(C), (b) (7)(E) failure to provide a place to express breast milk shielded from view and free from intrusion; and under FLSA Section 15(a)(3), retaliation. (See Exhibit D-2 for PTUN)

Period of this Investigation: August 19, 2013 through May 28, 2014. The period of investigation represents the date (b) (6), (b) (7)(C) returned from maternity leave, representing the point at which (b) (6), (b) (7)(C) started needing to express milk at work, through the date WHI (b) (6), (b) (7)(C) initiated the investigation. The end date of the investigative period is not (b) (6), (b) (7)(C) last day of work, (b) (6), (b) (7)(C), because (b) (6), (b) (7)(C) originally (b) (7)(E) retaliation.

MODO: This employer is a MUER as it is comprised of 5 separate facilities. (b) (7)(E)
(b) (6), (b) (7)(C) SFDO is the MODO Office; (b) (7)(E)
(b) (6), (b) (7)(C) (See Exhibit D-24)

Prior History: The only prior history of this employer is the FMLA case that caused the onset of this investigation. The Case ID for the FMLA case of Berkeley Food & Housing Project is 1718624. Although that case was initiated by (b) (6), (b) (7)(C) (b) (7)(E) wrongful termination, (b) (6), (b) (7)(C) simultaneously contacted an attorney and reached a settlement. However, the FMLA systemic approach led to WHI (b) (6), (b) (7)(C) discovering systemic notification violations of the FMLA.

Nature of Business: The subject firm is Berkeley Food and Housing Project (BFHP). BFHP is a 40 year old social service 501(c)3 organization that serves the homeless by providing transitional and permanent housing and placement, free meals, accessibility to health services, and services to help the homeless and those in need increase their income. BFHP is comprised of 5 main programs in different facilities: the Multi-Service Center, Men's Housing Program, North County Women's Center, Russell Street Residence, and ROADS Home Supportive Services for Veteran Families (SSVF) Program. The firm has employed between (b) (4) part-time and full-time employees for the past 2 years, among the 5 facilities. The following are the addresses of all of the BFHP programs and locations:

Multi-Service Center
2362 Bancroft Way
Berkeley, CA 94704
Phone: 510.649.4965

Men's Housing Program

1931 Center St.
Berkeley, CA 94704
Phone: 510.649.4980

North County Women's Center
2140 Dwight Way
Berkeley, CA 94704
Phone: 510.649.4965

Russell Street Residence and Annex
1741-1743 Russell St.
Berkeley, CA 94703
Phone: 510.843.3420

ROADS Home Supportive Services for Veteran Families (SSVF) Program
3905 MacDonald Ave.
Richmond, CA 94805
Phone: 510.260.0873
*See Exhibits C-2, C-3

Individual Coverage: Since BFHP is a non-profit organization that does not make sales, enterprise coverage was not established and individual coverage was pursued for the complainant. Individual employees “engaged in commerce or in the production of goods for commerce” are covered individually under the Act. As per FLSA Sec. 203(j), “produced” includes handling and/or transporting goods for the purposes of interstate commerce. WHI ^{(b) (6), (b) (7)} analyzed individual coverage for employees engaged in commerce or in the production of goods for commerce as per CFR Title 29 Part 776.9-77.16. Part 776.10(b) specifically states that “employees whose work is an essential part of the stream of interstate or foreign commerce, in whatever type of business they are employed, are likewise engaged in commerce and within the Act's coverage.” This section of the Regulations goes on to state that “employees whose work involves the continued use of the interstate mails,...telephone, or similar instrumentalities for communication across State lines are covered by the Act” and “...if the employee as a regular and recurrent part of his duties, uses such instrumentalities in obtaining or communicating information or in

sending or receiving written reports or messages, or orders for goods or services,... he comes within the scope of the Act as an employee directly engaged in the work of 'communication' between the State and places outside the State.” Furthermore, FOH 11n01 reiterates that employees of non-profits whose work involves regular use of interstate mails and communications are individually covered.

As a part of (b) (6), (b) (7)(C) regular and recurring duties, (b) (6), (b) (7)(C) made and received calls from out of state to make payments or resolve payment issues for BFHP, sent and received emails from out of state to/from vendors such as AT&T, whose office is located in Carol Stream, Illinois. (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) called the Illinois AT&T office at least 3-4 times a month and that (b) (6), (b) (7)(C) paid bills whose ultimate destination was out of state at least once a week. Vendors (b) (6), (b) (7)(C) mentioned include the following: (b) (4)

(b) (6), (b) (7)(C) stated (b) (6), (b) (7)(C) paid the bills to out of state vendors at least once a week and that (b) (6), (b) (7)(C) made phone calls and sent/received emails during the week as well. Between making/receiving phone calls, sending/receiving emails, and paying bills to out of state vendors, WHI (b) (6), (b) (7)(C) determined that (b) (6), (b) (7)(C) was individually covered based on (b) (6), (b) (7)(C) regular and recurring engagement in interstate commerce. (See Exhibits B-1, C-3)

EXEMPTIONS

(b) (6), (b) (7)(C) is not exempt from the Section 7 overtime provisions of the FLSA; therefore, (b) (6), (b) (7)(C) is covered under the Nursing Mothers Provision under the FLSA. (b) (6), (b) (7)(C) was paid an hourly rate of (b) (6), (b) (7)(C) per hour as an Accounting Specialist. (See Exhibits B-1, D-3)

STATUS OF COMPLIANCE

Section 7(r)(1)(A): A Reasonable Break Time

(b) (6), (b) (7)(C) stated that the employer allowed (b) (6), (b) (7)(C) to take as many breaks as necessary to express milk and that initially, (b) (6), (b) (7)(C) was told that it would not affect (b) (6), (b) (7)(C) pay. Later, (b) (6), (b) (7)(C) superiors explained that they researched the law and found that (b) (6), (b) (7)(C) did not have to be paid for additional breaks beyond those breaks

that were already compensated. (b) (6), (b) (7)(C) received a paid ½ hour lunch as well as two paid 10 minute breaks. The employer explained that any breaks beyond those already compensated breaks would be uncompensated. (See Exhibit B-1)

(b) (6), (b) (7)(C), for (b) (6), (b) (7)(C) own personal financial reasons, decided to cut back on (b) (6), (b) (7)(C) breaks to express milk in order to avoid deductions in (b) (6), (b) (7)(C) pay for breaks outside of (b) (6), (b) (7)(C) compensated breaks, however (b) (6), (b) (7)(C) confirmed that the employer provided (b) (6), (b) (7)(C) the opportunity to express milk as much as (b) (6), (b) (7)(C) needed. As such, no violation of Section 7(r)(1)(A) (b) (7)(E) (See Exhibit B-1)

Investigative Result of Complainant's Allegation:

(b) (6), (b) (7)(C) made the following (b) (7)(E) (1) failure to provide an adequate space; and (2) retaliation. The investigation was able to establish failure to provide an adequate space as per the FLSNM provisions as a violation; however the investigation did not substantiate (b) (7)(E) retaliation.

Section 7(r)(1)(B): A Place Shielded from View and Free from Intrusion

(b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) was out on pregnancy and maternity leave (b) (6), (b) (7)(C). When (b) (6), (b) (7)(C) returned to work (b) (6), (b) (7)(C) worked for approximately 3 weeks and took leave again (b) (6), (b) (7)(C) returned to work (b) (6), (b) (7)(C) and was officially terminated from (b) (6), (b) (7)(C) position (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) was expressing milk (b) (6), (b) (7)(C) and again when (b) (6), (b) (7)(C) returned to work from (b) (6), (b) (7)(C) (See Exhibit B-1)

(b) (6), (b) (7)(C) (b) (7)(E) there was no designated space at BFHP for women to breastfeed. (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) had to check a series of spaces for availability and if they were in use, (b) (6), (b) (7)(C) would breastfeed at (b) (6), (b) (7)(C) desk which was a shared office space in view of other coworkers. (See Exhibit B-1)

BFHP rents administrative offices and a dining hall inside Trinity United Methodist Church in Berkeley, CA. The church owns the building and allows BFHP and other non-profit organizations to rent out rooms and/or space. During the initial conference on 06/13/2014 with Executive Director Terrie Light,

Ms. Light confirmed that space is a limited for BFHP, and in her words, a luxury. (See Exhibit C-1)

David Stogner, Operations Manager for BFHP at the time of (b) (6), (b) (7)(C) employment, and Purvi Knopf, (b) (6), (b) (7)(C) direct supervisor, met with (b) (6), (b) (7)(C) in August of 2013 when (b) (6), (b) (7)(C) returned from maternity leave and told (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) could use Purvi's office when (b) (6), (b) (7)(C) needed to express milk. They also told (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) could use the church's meditation room or the church's fireside room, when available, even though those are not spaces rented out by BFHP. (b) (6), (b) (7)(C) stated that both Purvi's office and the church's rooms were often in use and that they were not shielded from view and free from intrusion from coworkers and the public. (See Exhibit B-1, C-4)

WHI (b) (6), (b) (7)(C) visited each of these spaces during (b) (6), (b) (7)(C) visit to the establishment for the initial conference on 06/13/14. (b) (6), (b) (7)(C) found that Purvi's office was not an adequate space because it was not shielded from view; the office has 2 large, clear, multi-paned windows, one of which has blinds, the other does not. The office faces a busy street, Bancroft Way, and one can clearly see cars and passersby from the window, in turn meaning those passersby and cars are able to see inside the office. (See Exhibit D-4 for a photo of Purvi's office)

The church's meditation room has a large window, with blinds, and a solid wood door which had a lock on it. With the blinds closed, the meditation room could be suitable, however, (b) (6), (b) (7)(C) stated that since this room belongs to the church and is not rented by BFHP, it is often occupied and used for counseling sessions and church meetings. (See Exhibit D-5 for a photo of the meditation room)

The church's fireside room has 3 large nearly floor to ceiling windows which have no blinds or window coverings. The room is ground level and due to its visibility, it does not meet the definition of Section 7(r)(1)(b). (See Exhibit D-6 for a photo of the fireside room)

(b) (6), (b) (7)(C) mentioned the McCoy room and stated that it had windows and 2 doors where coworkers and the public could go in and out. The room was locked during WHI (b) (6), (b) (7)(C) visit, which demonstrated lack of availability and the need for coordination and permission from the church to use any additional space. Also, according to (b) (6), (b) (7)(C), the room does not appear to be suitable due to lack of privacy as it is not free from intrusion.

During the tour of the establishment, WHI (b) (6), (b) (7) and Ms. Light stopped at the church's children's room. The door was locked however it had a small square glass window on the door which allowed WHI (b) (6), (b) (7) to look inside. The room has the 1 door that locks, and 1 window with heavy curtains that pull across to provide privacy. Ms. Light explained that this room is only used on Sundays for children's Sunday school, and that none of her administrative staff work on Sundays. Ms. Light agreed to contact the church's secretary for permission to use this room in the future, in the event that another employee need to express milk in the future, as she stated she currently had no nursing mothers on staff. The church's secretary confirmed that if needed for purposes of expressing milk, BFHP could use the room and stated that the church would make a copy of the key, in the event a nursing mother needed to use the space. WHI (b) (6), (b) (7) explained that BFHP would need to cover the small square glass window on the door with a temporary covering so as to be in compliance with the Act. Ms. Light stated that she would be able to provide an appropriate covering for the small glass window that could be removed when the church used the room on Sundays. (See Exhibit D-7 for a photo of the room and Exhibit D-23 for a confirmation email from the church's secretary)

Section 12: Child Labor

The firm did not employ any minors under 18 years old during the investigative period. As such, no violations of Section 12 of the FLSA (b) (7)(E) . (See Exhibit C-1)

Section 15(a)(3): Retaliation

Originally, (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) believed that (b) (6), (b) (7)(C) requests to express milk and find an adequate space to express milk contributed to (b) (6), (b) (7)(C) termination. However, when WHI (b) (6), (b) (7) contacted (b) (6), (b) (7)(C) on 06/16/14 to notify (b) (6), (b) (7)(C) of the results of the investigation, (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) no longer felt that exerting (b) (6), (b) (7)(C) right to breastfeed contributed to (b) (6), (b) (7)(C) termination. Regardless, WHI (b) (6), (b) (7) had already reviewed (b) (6), (b) (7)(C) personnel file and found the following factors that contributed to (b) (6), (b) (7)(C) termination:

- (b) (6), (b) (7)(C) received a verbal and written warning for not following proper protocol for requesting time off
- (b) (6), (b) (7)(C) received a written warning for late payments resulting in operational problems and late fees for BFHP
- (b) (6), (b) (7)(C) received a suspension until 01/22/13 due to substandard work performance; (b) (6), (b) (7)(C)

direct supervisor stated that (b) (6), (b) (7)(C) tardiness, late payments of BFHP bills, lack of time management and organization contributed to (b) (6), (b) (7)(C) suspension.

- (b) (6), (b) (7)(C) was placed on a performance improvement plan (PIP) (b) (6), (b) (7)(C), which mentioned (b) (6), (b) (7)(C) must improve (b) (6), (b) (7)(C) performance of the following areas: execution and attitude, quality of work, problem-solving, and attendance and punctuality.

*See Exhibits D-11 to D-21

(b) (6), (b) (7)(C) did not deny that (b) (6), (b) (7)(C) had attendance and tardiness issues at work, due to taking care of (b) (6), (b) (7)(C) ill child. (b) (6), (b) (7)(C) still did not meet the FMLA 1,250 hours requirement due to months of leave after reaching the 12 month eligibility requirement, therefore (b) (6), (b) (7)(C) leave to care for (b) (6), (b) (7)(C) was still not FMLA protected. (b) (6), (b) (7)(C) also acknowledged that (b) (6), (b) (7)(C) made a financial error by forgetting to include \$1,000 of expenses in the month end report. (See Exhibit B-1)

WHI (b) (6), (b) (7)(C) determined that (b) (6), (b) (7)(C) termination was not due to exerting (b) (6), (b) (7)(C) right to express milk. WHI (b) (6), (b) (7)(C) determined that (b) (6), (b) (7)(C) termination was based on ongoing performance issues, based on (b) (6), (b) (7)(C) personnel record as well as (b) (6), (b) (7)(C) own acknowledgment of performance deficiencies and the retraction of (b) (6), (b) (7)(C) (b) (7)(E)

DISPOSITION

The Final Conference was held telephonically on June 17, 2014; Executive Director Terrie Light and WHI (b) (6), (b) (7)(C) were present. WHI (b) (6), (b) (7)(C) explained that the investigation was limited to (b) (6), (b) (7)(C) (b) (7)(E) under the FLSNM for failure to provide an adequate space and originally, for retaliation. (b) (6), (b) (7)(C) explained that the rooms that (b) (6), (b) (7)(C) had been provided access to in order to express milk were not only unreliable because they were oftentimes in use, but they were not in compliance with Section 7(r)(1)(2) of the Act because they were not shielded from view and free from intrusion. (b) (6), (b) (7)(C) stated that the windows in Purvi's office and the fireside room did not have any blinds or window coverings and that all the rooms were often in use when (b) (6), (b) (7)(C) needed to express milk.

WHI (b) (6), (b) (7)(C) explained that (b) (6), (b) (7)(C) understood the lack of space that BFHP had access to however (b) (6), (b) (7)(C) explained that BFHP was still a covered employer and needed to be in compliance with the FLSNM provisions. As previously discussed with Ms. Light, WHI (b) (6), (b) (7)(C) suggested that when a nursing mother needs to express milk in the future, Ms. Light may get permission from the church to use the children's

room and request a copy of the key. Therefore, BFHP would have a room that is always available Monday through Friday for administrative employees to express milk, as none work on weekends. Ms. Light reconfirmed that the church's secretary had given permission to use the room in the future. (See Exhibit D-23)

WHI (b) (6), (b) (7) also explained that the original (b) (7)(E) of retaliation was (b) (7)(E) (b) (6), (b) (7) stated that the employees' personnel file demonstrated a pattern of performance issues, including write-ups, a suspension, and a performance improvement plan. As such, WHI (b) (6), (b) (7) determined that the employer had not retaliated against the employee for expressing milk, rather, for (b) (6), (b) (7) own performance deficiencies.

WHI (b) (6), (b) (7) had previously provided the employer with Fact Sheet #73, which (b) (6), (b) (7) reviewed again with the employer. (b) (6), (b) (7) also informed the employer of the FLSA's anti-retaliation provisions under Section 15(a)(3). Lastly, the employer was advised that BFHP needs to comply with the strictest standard at the California state level or federal law. There may be applicable California law regarding the expressing of breast milk at work.

WHI (b) (6), (b) (7) also suggested that Ms. Light have someone visit the other BFHP facilities in order to have a plan in place if an employee has a need to express milk in the future. (b) (6), (b) (7) explained that this was not a requirement, however, it may be helpful for BFHP to have a plan in place in the event an employee at one of the other facilities need to express milk.

Ms. Light stated that she herself will visit the facilities, along with a newly temporarily hired HR Consultant, in order to determine a suitable place for nursing mothers in the future. Ms. Light also stated that BFHP would modify the employee handbook to include information about nursing mothers and the FLSNM provision of the FLSA.

Ms. Light stated that the employer agrees to future compliance.

Recommendation: The case is recommended for administrative closure. No further action is necessary. (b) (7)(E)

(b) (6), (b) (7)(C) Notification:

(b) (6), (b) (7)(C) was notified telephonically of the results of the investigation on June 16, 2014 and given (b) (6), (b) (7)(C) 16(b) rights if (b) (6), (b) (7)(C) wishes to pursue the issue of retaliation, although (b) (6), (b) (7)(C) retracted that claim from (b) (6), (b) (7)(C) original (b) (7)(E)

Prepared and submitted by:

(b) (6), (b) (7)(C)

Wage and Hour Investigator

Publications Provided: WHD Fact Sheet 73, Fact Sheet 44, Fact Sheet 71a, Handy Reference Guide

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1731446 Originating District: Honolulu District Office
Local Filing Number: 2014-198-01107 Investigating District: Honolulu District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 06/06/2014
Assignment Date: 07/10/2014

Employer Information

Trade Name: Hilo Medical Center Legal Name: Hilo Medical Center
Address: 1190 Waianuenue Ave EIN: 94-3282424
County: Hawaii
NAICS Code: 62211
Hilo, HI 96720 No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 02/19/2013 BNPI:
To: 05/31/2014 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☐
Compliance Status: Compliance (no violations found) Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

FLSNM, ER Coverage: 3s1c. Pd of Inv-2/19/13-5/3/14. (b) (7)(E) ER asked (b) (7)(E) to make up break time for expressing milk, but not other ees were required to do so. Limited IN on (b) (6) No Exemption claimed.
Finding: (b) (6) (b) (7)(E) . ER is in compliance of 207r. HRG and fs28d, 73 provided.
Recommend case to be closed.

WHI Signature: _____ Date: 09/16/2014

Reviewed By: _____ Date: _____

Hilo Medical Center
1190 Waiānue Ave
Hilo, HI, 96720

Case File #1731446
EIN # 62-1043970

FLSA NARRATIVE

COVERAGE

Reason for Investigation: The investigation was initiated (b) (7)(E) (b) (6), (b) (7)(C) (b) (7)(E) employer asked (b) (6), (b) (7)(E) to work extra 15 minutes to make up the time (b) (6), (b) (7)(E) spent to express milk, while other employees were not asked to do so when their break time exceeded compensable 10 minutes (see (b) (7)(E) Note).

203(s)(1)(c): Hilo Medical Center is one of the entities under Hawaii Health Systems Corporation, a Hawaii State entity. Hilo Medical Center engaged in the operation of a hospital as a public agency. Enterprise coverage is established under section 203(s)(1) (c) of the Act.

Hilo Medical Center employs more than 50 employees. Therefore, the firm is subject to the FLSA break time requirement for nursing mother.

Nature of Business: Hilo Medical Center is an entity under Hawaii Health Systems Corporation, a state entity which is engaged in the operation of hospitals.

Business Structure: The firm was established in 1897 in the State of Hawaii. Julie Tulang is currently the president of the company (see C1).

MODO Information: The firm's headquarter is Hawaii Health Systems Corporation, which is operated at Oahu, Hawaii (see C1). There are 12 entities under Hawaii Health Systems Corporation. (b) (7)(E) (see D7).

Workforce: Hilo Medical Center employs workforce of average (b) (4) employees during the investigation period (See A1, C1 and D4).

Section 203(d) employer: Based on Initial Conference (see C1) and interview statements (see B), Ms. Holly Kaakimaka, HR Director, is responsible for overseeing HR policies of the firm. Ms. Lisa Shiroma, Administrative Service Officer, is responsible for the administrative service of the firm. Both of them make daily operation decisions and act in the direct interest of the firm in relation to its employees. Therefore, Ms. Holly Kaakimaka and Ms. Lisa Shiroma are the Section 3(d) employer under the Act.

Prior History: This is the first investigation conducted on this firm.

Period of Investigation: 02/19/2013 through 05/31/2014.

Investigation Tool: Limited investigation on the nursing mother issue related to (b) (6), (b) (7)(C)

EXEMPTIONS

Section 213(a)(1): (b) (6), (b) (7)(C) was a pharmacy technician, and paid a hourly rate. (b) (6), (b) (7)(C) did not meet any exemption requirement under this section. (b) (6), (b) (7)(C), therefore, (b) (6), (b) (7)(C) is entitled to the breaks for expressing milk until 12/23/2014.

STATUS OF COMPLIANCE

Investigative Result of (b) (6), (b) (7)(C) (b) (7)(E) (b) (6), (b) (7)(C) (b) (7)(E) the firm discriminated against (b) (6), (b) (7)(C) as a nursing mother in regards to the break time (b) (7)(E). Detail is explained in Section 207(r) below.

Section 206 (MW): The investigation is limited to 207(r) of the Act.

Section 207 (OT): The investigation is limited to 207(r) of the Act.

Section 207 (r) break time for nursing mothers: Based on the interviews and records provided by employer, employees and (b) (6), (b) (7)(C), the firm is in compliance of this section. Below is the timeline of the events related to this issue (see B4, D1-D6):

- (b) (6), (b) (7)(C) gave birth.
- (b) (6), (b) (7)(C) returned to work, (b) (6), (b) (7)(C) informed (b) (6), (b) (7)(C), Pharmacy supervisor, (b) (6), (b) (7)(C) need to pump milk.
- (b) (6), (b) (7)(C) was informed by (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) was required to clock in/out for the break time because (b) (6), (b) (7)(C) break time is longer than compensable 10 minutes.
- (b) (6), (b) (7)(C) talked to Ms. Holly Kaakimaka, HR Director. Holly told (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) was not required to clock out for the break time
- (b) (6), (b) (7)(C), Ms. Lisa Shiroma, Administrative Service Officer, informed (b) (6), (b) (7)(C) that the firm received 2 complaints from other employees that (b) (6), (b) (7)(C) break time is much longer than compensable 10 minutes.
- (b) (6), (b) (7)(C) to HR Director, Ms. Holly that (b) (6), (b) (7)(C) felt harassed and discriminated by (b) (6), (b) (7)(C) when (b) (6), (b) (7)(C) attempted to express milk. A supervisor level discussion note was made with (b) (6), (b) (7)(C) on the expectation and suggestions (see D3).
- (b) (6), (b) (7)(C) sent a breastfeeding policy to the employees in pharmacy department regarding 3 options to take break, including one option: stay longer to make up time if the break lasted longer than compensable two 10 minutes breaks.
- (b) (6), (b) (7)(C) filed a formal complaint to Holly Kaakimaka in regards to the way (b) (6), (b) (7)(C) was treated by (b) (6), (b) (7)(C) when (b) (6), (b) (7)(C) took break time as a nursing mother.
- (b) (6), (b) (7)(C) emailed (b) (6), (b) (7)(C) a flex schedule to accommodate (b) (6), (b) (7)(C) need for longer break time. But (b) (6), (b) (7)(C) should make up the break time which exceeds two compensable 10 minutes after (b) (6), (b) (7)(C) regular schedule.
- (b) (6), (b) (7)(C) emailed Holly to raise (b) (6), (b) (7)(C) concern that (b) (6), (b) (7)(C) was not treated fairly in

- regards to monitoring (b) (6), (b) (7)(C) break time, and have to make up (b) (6), (b) (7)(C) time to express milk.
- (b) (6), (b) (7)(C), Holly written informed (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) temporary hire appointment will end on (b) (6), (b) (7)(C)
- (b) (6), (b) (7)(C) brought (b) (6), (b) (7)(C) who is from Union of Public Workers, to a meeting with Holly and Lisa. The result of the meeting is that the employer agreed to not ask (b) (6), (b) (7)(C) to stay late even if (b) (6), (b) (7)(C) break time goes over a few minutes.

About discrimination:

Employee's interviews revealed that Pharmacy department enforced a rigid protocol in regards to the break time so that there is staff coverage throughout the shift. Therefore, employees were required to coordinate with the supervisor or coworkers when they take a break, and compensable break time is limited to 10 minutes, twice a day. Some employees took longer than 10 minutes break in the past, and were notified by the department supervisor privately to follow 10 minutes requirement. Therefore, the firm did not treat (b) (6), (b) (7)(C) differently from other employees when the department enforces the break time policy.

(b) (6), (b) (7)(C) (b) (7)(E) discrimination because the employer asked (b) (6), (b) (7)(C) make up the break time (b) (6), (b) (7)(C) spent to express milk, while other employees were not asked to do so even though their break time also exceeded compensable 10 minutes. Interviews revealed that (b) (6), (b) (7)(C) took average 20-30 minutes break to express milk; other employee's break time was within compensable 10 minutes, or only 1-2 minutes longer if it happened randomly. (b) (6), (b) (7)(C) situation is very different from other employees. Therefore the discrimination cannot be substantiated.

Time of breaks:

According to fact sheet #73, *Employers are required to provide a reasonable amount of break time to express milk as frequently as needed by the nursing mother. The frequency of breaks needed to express*

milk as well as the duration of each break will likely vary.

Employees interviews and timeline of events above indicated that there is no evidence to substantiate that the firm stopped (b) (6), (b) (7)(C) from taking a break, nor limited the length and frequency of breaks that (b) (6), (b) (7)(C) needed to express milk. Therefore, no violation is substantiated on this issue.

Compensation of breaks:

According to fact sheet #73, employer is not required under FLSA to compensate nursing mothers for breaks taken for the purpose of expressing milk. The FLSA requirement of break time for nursing mothers to express breast milk does not preempt State laws that provide greater protections to employees (for example, providing compensated break time...)

Employees and (b) (6), (b) (7)(C) interviews revealed that (b) (6), (b) (7)(C) took average 20-30 minutes to express milk, 2 to 3 times a shift, which are much longer than compensable 10 minutes break that the department allowed. The firm asked (b) (6), (b) (7)(C) to make up the extra break time exceeding two compensable 10 minutes if she chose to be compensated for the extra time. Therefore, no violation is substantiated on this issue.

Location of the breaks:

WHI also visited the room which is dedicated to the nursing mother's use. It's a space shielded from view, and free from any intrusion from co-workers and the public, it's created for expressing milk and made available when needed by the nursing mother. Therefore, the room meets the statutory requirement.

About retaliation:

(b) (6), (b) (7)(C) was hired under a conditional offer of employment (see D1). Pharmacy management made a decision not to renew (b) (6), (b) (7)(C) hire appointment on (b) (6), (b) (7)(C) based on the (b) (6), (b) (7)(C) performance review conducted in 2013 (see D2). An email that Lisa Shiroma sent to HR on 3/18/2014 indicated that (b) (6), (b) (7)(C) hire appointment was not renewed (see D4). The confrontation that (b) (6), (b) (7)(C) had with the management in regards to nursing mother's break time started in the middle

(b) (6), (b) (7)(C). Therefore, there is no relationship between the management decision to not renew (b) (6), (b) (7)(C) hire appointment with the break time issue.

Section 211 (RK): No violation.

Section 12 (CL): No violation.

DISPOSITION

Recommendation: Recommend this case to be closed (b) (7)(E)

(b) (6), (b) (7)(C) **Notification**: (b) (6), (b) (7)(C), was advised of the investigative result on 8/25/2014 (see Diary sheet).

Publications Provided: FLSA, HRG FLSA; fact sheet #044, #73; CFR 516, 541, 578, 778, 785, 580.

Future Correspondence: Send all future correspondence to Darin Leong, Marr Jones & Wang. His contact information is as follows.

Darin Leong
Marr Jones & Wang
1003 bishop st. suite 1500,
HAWAII 96813
Phone: 536-4900

Prepared and Submitted by:

Hilo Medical Center Case ID: 1731446

(b) (6), (b) (7)(C)

September 16, 2014

Wage Hour Investigator

Honolulu District Office

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1733261 Originating District: Seattle District Office
Local Filing Number: 2014-323-07030 Investigating District: Seattle District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 06/25/2014
Assignment Date: 06/25/2014

Employer Information

Trade Name: Sunrise Services, Inc
Address: Madison St

Everett, WA98201

Legal Name: Sunrise Services, Inc
EIN: 91-1013396
County: Snohomish
NAICS Code: 624120
No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 04/01/2014 BNPI:
To: 08/30/2014 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☐
Compliance Status: Compliance (no violations found) Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

(b) (7)(E) ER did not provide adequate space or break time to express milk. Inv limited to FLSANM. ER cov: 3s1a. 50+ ees. No viols found. EE does not work in ER owned building. ER has no requirement to provide space. Provides break time. FC with HR Director Lisa Pinkerton on 9/4/14. AT continue compliance. Pubs Prov: FS 44, 73

WHI Signature: _____ Date: 09/09/2014

Reviewed By: _____ Date: _____

Sunrise Services Inc
811 Madison St
Everett, WA 98203
Contact: Lisa Pinkerton, HR Director
425-212-44200
EIN: 91-1013396
Case ID: 1733261

Fair Labor Standards Act Nursing Mothers

This investigation was initiated because of (b) (7)(E) (b) (6), (b) (7)(C) (b) (7)(E) (b) (6), (b) (7)(C) was not allowed to work because (b) (6), (b) (7)(C) needed to express milk and that the employer did not provide (b) (6), (b) (7)(C) a private space so (b) (6), (b) (7)(C) could express milk. (b) (7)(E)

The investigation was limited to the nursing mothers provision of Section 7 under the FLSA.

Prior Investigative History

There has been no prior investigation of this establishment.

MODO

The business is located in Everett, WA and has several locations around the State of Washington. The company is headquartered in Everett and Seattle DO is the MODO. (See D-1)

Coverage

Sunrise Services is a for profit company that provides services to the elderly, people who have mental and physical disabilities, and people who need help to stay in their own homes. (See Ex C-1a) Sunrise Services contracts with the State of Washington, various counties, DSHS, and receives various grants to provide community services. (See Ex C-1b) The company grosses well over \$500,000 per year and has (b) (4) employees. (See Ex C-1a) More than two employees are engaged in interstate commerce by

billing Medicaid & Medicare. All employees are covered under §3(s)(1)(a) of the FLSA on an enterprise basis. Since there are more than 50 employees, the coverage includes §207(r); the nursing mothers provision of the FLSA.

The employee is eligible because (b) (6), (b) (7)(C) is non-exempt from overtime and has had (b) (6), (b) (7)(C) child within 1 year.

The current investigation is limited to §207(r) of the FLSA and (b) (6), (b) (7)(C) in question is a non-exempt employee covered by §207(r).

The present investigation covers the period April 1, 2014 through August 30, 2014.

Exemptions

None claimed and none granted.

Status of Compliance

(b) (6), (b) (7)(C) works as a care/nursing assistant in clients' homes. (b) (6), (b) (7)(C) assists people with dressing, bathing, administers medicine, and cleans their homes. (See Ex B-1) When (b) (6), (b) (7)(C) returned from maternity leave (b) (6), (b) (7)(C) was working with two older male clients in their apartments. One of the clients complained about (b) (6), (b) (7)(C) expressing milk in (b) (6), (b) (7)(C) apartment and both (b) (6), (b) (7)(C) and the employer agreed that (b) (6), (b) (7)(C) should be reassigned to other clients whose needs allowed (b) (6), (b) (7)(C) to take breaks and would not be upset about (b) (6), (b) (7)(C) expressing milk. It took two weeks for the employer and (b) (6), (b) (7)(C) to agree on the clients. (b) (6), (b) (7)(C) turned down work within those two weeks in order to accommodate (b) (6), (b) (7)(C) other job. (See Ex C-1c) The employer made arrangement with the apartment complex for (b) (6), (b) (7)(C) to use the complex's cabana to express milk. It offers privacy and lockable doors. (See Ex B- 1, C- 1b) (b) (6), (b) (7)(C) is currently working, receiving breaks, and is able to utilize a private space in which (b) (6), (b) (7)(C) can express milk.

207(r)(1)(A) – Failure to provide adequate break time (frequency, duration, or complete denial):

No violations found. (b) (6), (b) (7)(C) was reassigned to clients that allowed (b) (6), (b) (7)(C) to take breaks and was given adequate break time to express (b) (6), (b) (7)(C) breast milk. (See Ex B-1)

207(r)(1)(B)- Failure to provide functional space (bathroom not permissible, space not free from intrusion, not shielded from view): No violations found. (b) (6), (b) (7)(C) does not work in an employer owned facility and the employer is not required to provide a space to express milk. However, the employer has made arrangements for (b) (6), (b) (7)(C) so (b) (6), (b) (7)(C) has a private space to express (b) (6), (b) (7)(C) milk.

207(r)(2) – Compensation for break time: No violations found. The employer paid (b) (6), (b) (7)(C) for all time expressing milk. (See Ex B-1)

207(r)(3) – Undue Hardship: No violations. The employer employs over (b) (4) employees so the exemption does not apply. In addition, the employer does not object to its obligation to comply with the law whenever possible considering most of their employees work in non-employer owned spaces.

Disposition

WHI (b) (6), (b) (7)(C) conducted a conference with HR Director Lisa Pinkerton at the establishment on 8/19/2014. Ms. Pinkerton explained the working conditions and how clients' needs and requirements dictate whether employees can take breaks. For instance, some clients require 24/7 care and cannot be left alone. Some clients have mental or developmental challenges that find expressing milk too disruptive. (b) (6), (b) (7)(C) agreed that the clients (b) (6), (b) (7)(C) was working with when (b) (6), (b) (7)(C) returned from maternity leave were not appropriate given (b) (6), (b) (7)(C) need to express milk and requested different clients. In addition, the space Sunrise arranged for (b) (6), (b) (7)(C) to use was not available 24/7 so they also wanted (b) (6), (b) (7)(C) to have clients (b) (6), (b) (7)(C) could work with during those hours. Mutually agreeable clients were found and (b) (6), (b) (7)(C) is now working more hours than (b) (6), (b) (7)(C) was before maternity leave and has adequate time and space to express milk during (b) (6), (b) (7)(C) working day.

WHI (b) (6), (b) (7)(C) followed up with Ms. Pinkerton on 9/4/14 and let her know there were no violations. WHI (b) (6), (b) (7)(C) left a voice message for (b) (6), (b) (7)(C) at (b) (6), (b) (7)(C) designated number.

Publications Provided

Fact sheets 44, 73

Recommendation

Recommend close administratively (b) (7)(E)

Further Correspondence

Mr. Lisa Pinkerton
811 Madison St
Everett, WA 98203
425-212-4200

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1733262 Originating District: Seattle District Office
Local Filing Number: 2014-323-07031 Investigating District: Seattle District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 06/25/2014
Assignment Date: 06/25/2014

Employer Information

Trade Name: Boeing Legal Name: The Boeing Company
Address: Casino Rd EIN: 91-0425694
County: Snohomish
NAICS Code: 33641
Everett, WA98204 No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 05/01/2014 BNPI:
To: 08/30/2014 Reinvestigation: ☒
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

Limited to FLSANM. EE (b) (7)(E) ER did not provide adequate space for the number of nursing mothers at (b) (6), (b) (7)(E) location. (b) (7)(E). FLSA cov: 3s1a. ER did not have enough private spaces available for nursing mothers at their Everett location. ER agreed to comply and immediately created a plan to find more space and get into compliance. FC with Al Mellor on 8/25/14. Pubs provided FS 44, 73.

WHI Signature: _____ Date: 09/03/2014

Reviewed By: _____ Date: _____

Boeing Co.
3003 West Casino Rd
Everett, WA 98204
Contact: Al Mellor
425-965-3671
EIN: 91-0425694
Case ID: 1733262

Fair Labor Standards Act Nursing Mothers

This investigation was initiated because of (b) (7)(E) (b) (6), (b) (7)(C) (b) (7)(E) there was not enough space for the number of nursing mothers that required a place to express milk during their work day. (b) (6), (b) (7)(C) could not access a private room in order to express milk on a regular basis. (b) (7)(E) and the company agreed to create more space.

The investigation was limited to the nursing mothers provision of Section 7 under the FLSA.

Prior Investigative History

There have been several prior investigation of this establishment.

Case ID: 1716088. FMLA (b) (7)(E) Case dropped due to ER corrected before investigation started. (See Ex E-1)

Case ID: 1705412. FMLA (b) (7)(E) Case dropped due to issue being resolved before investigation started. (See Ex E-2)

Case ID: 1705007. FMLA (b) (7)(E) EE (b) (7)(E) wrongful termination due to excessive absences that were covered by FMLA. (b) (7)(E) (See Ex E-3)

Case ID: 1602904. FMLA (b) (7)(E) EE (b) (7)(E) failure to reinstate to equivalent position. (b) (7)(E) (See Ex E-4)

Case ID: 1581354. EE (b) (7)(E) wrongful termination and not allowed to return to work. (b) (7)(E) (See Ex E-5)

MODO

The business is located in Everett, WA, but the headquarters is in Chicago, IL. Chicago DO is the MODO. (See D-1)

Coverage

The Boeing Company manufactures airplanes among other ventures. Its business operates all over the country as well as overseas, shipping its goods across state lines on a regular basis. The company grosses well over \$500,000 per year and has over one hundred thousand employees engaged in interstate commerce. (See Ex C- 2a) All employees are covered under §3(s)(1)(a) of the FLSA on an enterprise basis. Since there are more than 50 employees, the coverage includes §207(r); the nursing mothers provision of the FLSA.

The current investigation is limited to §207(r) of the FLSA and (b) (6), (b) (7)(C) in question is a non-exempt employee covered by §207(r).

The present investigation covers the period May 1, 2014 through August 30, 2014.

Exemptions

None claimed and none granted.

Status of Compliance

207(r)(1)(A) – Failure to provide adequate break time (frequency, duration, or complete denial):

No violations found. (b) (6), (b) (7)(C) was given adequate break time to express (b) (6), (b) (7)(C) breast milk. (b) (6), (b) (7)(C) needs to express (b) (6), (b) (7)(C) breast milk three times per shift and (b) (6), (b) (7)(C) was provided all the time (b) (6), (b) (7)(C) needed. (See Ex B-1a)

207(r)(1)(B)- Failure to provide functional space (bathroom not permissible, space not free from intrusion, not shielded from view): Violations found. (b) (6), (b) (7)(C) does not have a private space

where (b) (6), (b) (7)(C) can express (b) (6), (b) (7)(C) milk free from intrusion. The company has provided rooms strictly for the use of nursing mothers, but there aren't enough rooms available for the number of nursing mothers at the location (b) (6), (b) (7)(C) works.

(b) (6), (b) (7)(C) returned to work from maternity leave (b) (6), (b) (7)(C) and learned about Boeing's nursing mother's program on (b) (6), (b) (7)(C) own. The program manages the rooms nursing mothers can use to express milk. Mothers returning from maternity leave go to a website on the company's intranet and can sign up for a time to use the room(s) available at their location. The rooms are equipped with locks, chairs, and a refrigerator to store the milk. The rooms are locked and each woman that signs up is given the door code. The door codes are unique to each room and not to each person. (b) (6), (b) (7)(C) has signed up for time slots in (b) (6), (b) (7)(C) building only to have other women enter while (b) (6), (b) (7)(C) is in there to also use the room. (b) (6), (b) (7)(C) has been told that (b) (6), (b) (7)(C) could not expect privacy due to the demand for the room. (See Ex B- 1a) (b) (6), (b) (7)(C) has used the nursing room in the building adjacent to (b) (6), (b) (7)(C) because it has partitions so multiple women can use it at the same time and offers more privacy, but it also has limited availability due to high demand. There are about 20 women between the two buildings who use both rooms and some of those women take shuttles to the main factory about 1 mile away to use a room there that has more availability. (b) (6), (b) (7)(C) is unable to sign up for the nursing rooms for the times (b) (6), (b) (7)(C) needs to use them and also utilizes conference rooms when (b) (6), (b) (7)(C) can. (b) (6), (b) (7)(C) has been told that (b) (6), (b) (7)(C) is not supposed to use those rooms for nursing. (b) (6), (b) (7)(C) is also concerned that employees from 3 other buildings set for demolition are moving into (b) (6), (b) (7)(C) building and the adjacent building, so there are even more women that will need to use the remaining two nursing rooms. (See Ex B-1b)

WHI (b) (6), (b) (7)(C) spoke with the woman in charge of the nursing rooms at the Everett location, Ms. Alexander. (See Ex C-1a) She stated she was unaware that there was such an immediate need because there were some slots available between 7 & 9 am and after 4 pm. (See Ex C-1b) She also stated that she was not aware that women were getting the door codes from other women and that it was a security issue. (See Ex C-1a) WHI (b) (6), (b) (7)(C) explained that there was already not enough space available for the women who needed it when they needed it and that the company should have known that more women would be needing the rooms because there was a known amount of women already signed up for the rooms in the buildings being demolished and they were transferring to the remaining two buildings. Ms. Alexander said she was not sure how many nursing mothers would be moving to the remaining two buildings because some of the employees were moving to other locations. She also thought she was in compliance

with the regulation as long as the room was available during the day regardless of when the room was available.

WHI (b) (6), (b) (7)(C) explained that the nursing mothers needed a private room to express their milk when they needed to express, which is every 2 – 3 hours. Since most of the women are working similar schedules, the rooms are going to be needed during approximately the same time periods each day. Ms. Alexander stated that she requested more space already but it could take some time because it's up to the facilities department to find the space, prepare it, and get the whole thing approved through security. (See Ex C-1a) WHI (b) (6), (b) (7)(C) was referred to EEOC representative Al Mellor who represented the company throughout the investigation.

207(r)(2) – Compensation for break time: No violations found. The employer paid (b) (6), (b) (7)(C) for all time expressing milk. (See Ex B-1a)

207(r)(3) – Undue Hardship: No violations. The employer has hundreds of employees at or near the location where the employee works and made no objection to its obligation to comply with the law.

Disposition

WHI (b) (6), (b) (7)(C) conducted a final conference via telephone with EEOC officer Al Mellor on 8/25/2014. WHI (b) (6), (b) (7)(C) had been discussing the lack of space issue with Mr. Mellor and he was working the facilities department in order to speed things along. The company did not agree with Ms. Alexander and recognized that mothers returning to work would need space to express milk when they needed it and not whenever a private room was available. He provided a plan the company was implementing within 30 days. First, the company was immediately adding partitions to existing mother's rooms in order to provide privacy and more space. Second, the company was adding more rooms in each building that would be completed within 30 days.

(b) (6), (b) (7)(C) was advised of the plan.

Publications Provided

Fact sheets 44, 73

Recommendation

Recommend close administratively (b) (7)(E) .

Further Correspondence

Mr. Al Mellor
EEO Puget Sound Region
PO Box 3707 M/C 9U-FE
Seattle, WA 98124

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1736263 Originating District: West Covina District Office
Local Filing Number: 2014-186-07354 Investigating District: West Covina District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 07/28/2014
Assignment Date: 07/29/2014

Employer Information

Trade Name: Next Level Apparel Legal Name: YS Garments, Inc.
Address: 15730 S. Figueroa Street EIN: 20-0303999
Gardena, CA 90248 County: Los Angeles
NAICS Code: 31599
No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 08/15/2012 BNPI:
To: 08/14/2014 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Full Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

45.50h FLSANM initiated from (b) (7)(E) to inadeq breaks & place to express milk. (b) (6), (b) (7)(E) to be terminated in retal for asserting (b) (6), (b) (7)(C) rights. INV findings reveal: (b) (6), (b) (7)(C) terminated due to performance. In addition, (b) (6), (b) (7)(C) was over 1yr age at time of hire No viol for nursing mothers provided w/breaks & place to express milk. FC held w/Direct HR Maggie Vinas. (b) (6), (b) (7)(C) implemented changes includ: change to handbook, posters, & in-house training. HRG provided at IC. ER ATC & rev addit pubs provided. Rec. adm

WHI Signature: _____ Date: 09/16/2014

Reviewed By: _____ Date: _____

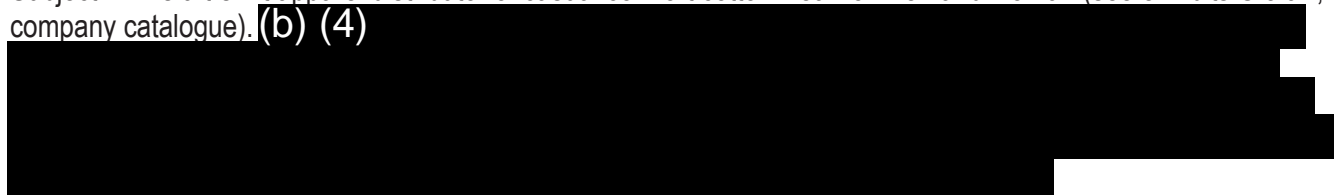
Next Level Apparel Inc.
dba: YS Garments
15730 S. Figueroa Street
Gardena, CA 90248
Tel (310) 631-4955
Fax (310) 965-9527
Website: <http://www.nextlevelapparel.com/16/home.htm>

Case #173626
2014-186-07354
EIN: 20-03039

FLSA NURSING MOTHER (FLSANM) NARRATIVE

COVERAGE

Subject firm is a t-shirt apparel distributor of casual comfort cotton wear for men and woman (see exhibits C.3.a-f; company catalogue). (b) (4)



Corporate headquarters consist of a large warehouse distribution center, design and marketing department, customer service representatives, and executive offices. YS Garments Inc. is a California Corporation incorporated on October 14, 2003 and solely owned by Mr. Simosoly (see exhibits C.2.a-d: CA Corp). List of executive management team include (see exhibits C.6: List of Exempt EE w/titles):

1. Yosef (Joseph) Simosoly, Owner and CEO
2. Mike Kohl, CFO
3. Eyal J. Ron, COO

The aforementioned individuals are identified as the 3(d) Employers under FLSA. Individuals make final decisions in regards to wages paid, hours worked, leave, discipline overall policies of the firm, and hiring/firing of employees as confirmed by Ms. Vinas during the IC.

The firm's ADV for calendar years 2013 was reported to be over \$500,000 per year. ADV for 2012 was

(b) (4) (see exhibits C.1. Copy of Fed Tax Return-Form 1120S) with similar earnings in 2011. The firm has employed more than (b) (4) employees, however there are approximately (b) (4) employees at any one given time (see exhibits C.5.a-d & C.1.a-x). All employees are covered on an individual basis throughout the period of investigation as they are handling goods for interstate commerce. Enterprise coverage also applies under Section 3(s)(1)(A) of FLSA throughout the investigative period.

FLSANM applies to employer with 50 or more employees, and only non-exemption employees are cover under the law. Both criteria are met in this investigation. Employer has a policy for nursing mothers to ensure compliance with laws (see exhibits C.7: ER Policy).

Prior History/ Associated/Linked:

There is no prior FLSA investigation of this firm. This is the first investigation of the firm. (b) (7)(E)

MODO:

MODO Manager, DD Kimchi Bui was notified of investigation on 8/8/14 (see exhibits D.1.a-d).

Period of Investigation

August 15, 2012 thru August 14, 2014. The current investigation was handled as a full investigation which examined the scope of compliance applicable to nursing mother under section 7 of the FLSA. A limited FLSA investigation for the profile pay period.

EXEMPTIONS

(b) (6), (b) (7)(C) was not exempt from Section 7 provisions of the FLSA. The firm has (b) (4) exempt employs with at least 50% being females (see exhibit B.3.a-b). Exempt and non-exempt employees are entitled to breaks to express milk under company policy (see exhibits C.6; list of Exempt EE). This was confirmed with Ms. Vinas during the IC held on August 14, 2014 and as per company training materials provided on 9/9/14 that show exempt employees informed of their rights to express milk (see exhibits E.10.a-o).

STATUS OF COMPLIANCE

Case Assignment: This case is initiative as a result of (b) (7)(E) (b) (6), (b) (7)(C) (b) (7)(E)

(b) (7)(E) violation of the Patient Protection and Affordable Care Act amendment to the FLSA (Break Time for Nursing Mothers). (b) (6), (b) (7)(C) (b) (7)(E) Next Level Apparel violated her rights as a nursing mother by refusing to provide (b) (6), (b) (7)(C) sufficient break time to pump (b) (6), (b) (7)(C) milk, requiring (b) (6), (b) (7)(C) to pump in the bathroom, and then terminating (b) (6), (b) (7)(C) employment (see exhibit B.3.a-b). (b) (6), (b) (7)(C) also stated there was at least 1 other woman that was nursing, and not provided with adequate space to express (b) (6), (b) (7)(C) milk.

Numerous attempts were made to contact (b) (6), (b) (7)(C) prior to the initial conference (see exhibits D.2.a-b). (b) (6), (b) (7)(C) responded to WHI (b) (6), (b) (7)(C) inquiries until August 21, 2014. The Initial conference took place on August 14, 2014 at firm's headquarter office. Representing the firm was Ms. Margarita Vinas, Director of Human Resource that provided all requested information to determine compliance under the FLSANM Act.

Break Time for Nursing Mothers:

Section 7(r)(1)(A)- provides that nursing mothers are entitled to provide “a reasonable break time” for an employee to express milk “each time such employee has need to express milk”.

(b) (6), (b) (7)(C) (b) (7)(E) employees were not guaranteed additional break times to express milk, (b) (7)(E) (see exhibit B.3). Employees that have expressed their milk in the last two years were interviewed to determine compliance. Employees interviewed revealed adequate breaks to express milk without restrictions (see exhibits B.1.a & B.2, B.4). Ms. Vinas confirmed that all employees are entitled to a 30 minute lunch break with two paid ten minute breaks per day. This corresponds with employee handbook reviewed at the initial conference (see exhibits E.9.g).

The firm employs warehouse and office employees, during the interview process, inconsistencies were noted for office and warehouse employees that expressed their milk. One warehouse employee was allowed to express (b) (6), (b) (7)(C) milk whenever (b) (6), (b) (7)(C) needed, yet required to clock out for this period, while other office employees were not subject to clocking out. A review of time cards revealed that all employees clocked out for breaks and lunch with no distinguishing between paid breaks from warehouse to office employees. Ms. Vinas confirmed discrepancy in practices between the two employee groups, thus established a policy within a week and implemented changes to ensure consistencies in rest breaks. Timesheets reviewed did not show excessive deductions for breaks (see exhibit E.4.a-j & E.6.a-e: timesheets for 2 Nursing mothers).

Section 7(r)(1)(B)- requires employers to provide a “place other than a bathroom, that is shielded from view and free from intrusions from coworkers and the public, which may be used by an employee to express

breast milk”.

A tour of the establishment was conducted and federal posters including the FLSANM was visible (see exhibits E.12.a). (b) (6), (b) (7)(C) claimed that (b) (6), (b) (7)(C) was required to express (b) (6), (b) (7)(C) milk in the woman's restrooms during the company's designated breaks. (b) (6), (b) (7)(C) also (b) (7)(E) at least one other employee from the Marketing department expressed (b) (6), (b) (7)(C) milk in the restrooms (see exhibits B.3.a-b). The nursing mothers of the firm were interviewed, including the named individual by (b) (6), (b) (7)(C). All employees reported accommodated away from the restroom to express their milk (see exhibit B.1 & B.4). Employees (b) (7)(E) to express milk in an office or empty quality control room (see exhibits E.12.b-c).

Yet, one of the employees reported that (b) (6), (b) (7)(C) was not provided with a private room for the first 3-4 days of expressing (b) (6), (b) (7)(C) milk (b) (6), (b) (7)(C). The employee claimed that (b) (6), (b) (7)(C) was accommodated with an empty office, yet the room was not private with a large window visible to the public (see exhibits B.1.a-b). Nevertheless, (b) (6), (b) (7)(C) was later directed to a separate office free from exposure, identified as the Quality Control Room (see exhibits E.12.b-c Pictures of QC room). This room was also used by the warehouse employee and was vacant with a lock, table, and electrical outlet (see exhibits B.4). Although this room was vacant, Ms. Vinas designated a 2 new station for nursing mother inside the show room (see exhibits E.12.d-g).

(b) (6), (b) (7)(C) (b) (7)(E) regarding the restrooms as the designated areas to express milk, (b) (7)(E) based on interviews and information provided by the employer. The employer provides private room to express their milk away from the restrooms.

Section6- Minimum Wage

No violations were established during the investigation. Warehouse and office employees are paid for all hours worked with the lowest hourly rate at (b) (4) (see exhibits E.1.a-x). Timesheets correspond with payroll records and all employees alleged to be paid for all hours worked.

The firm utilizes temporary workers employed through CRS Staffing Agency (see exhibits D.4.f). These workers are employed in the warehouse and guaranteed the applicable MW.

Section 7- Overtime

No violations were established during the investigation. The firm is in the practice of paying overtime at time and one half the hourly rates for all non-exempt employees after 8 hours in the day and after 40 hours in the week (see exhibits E.2.a-j: OT hours separated on Timesheets). Overtime is separated on the time sheets that are then

signed and reviewed by each employee before it is processed through.

Section 11:(RK)

No violations were established during the investigation. The firm has been in operations since 2003, yet lacked a Human Resource Department, with all employment payroll and personal practices administrated by Ms. Warna Binsol, Accounts Payable Manager. Ms. Margarita (Maggy) Vinas, Director of Human Resource has worked in this position since February 10, 2014, and taken responsibility for all employment and payroll practices.

The firm's workweek is Sunday through Saturday with the profile pay period covering 7/20/14-8/2/14/14 and paid every other Friday (see exhibits E.1.a-a.k: profile payroll & E.2.a-j; Sample timesheets). All employees (exempt/non-exempt) are required to clock in using an electrical time sheet. All federal and state posters are visible in the employees' kitchen area for warehouse and office employees (see exhibits E.11.a).

Ms. Vinas maintained adequate personal and payroll files for all current and former employees (see exhibits E.3.a-e). Ms. Miranda's personal file was reviewed and contained internal communication, employment history, personal bios, and separation documents (see exhibits E.8.a-m).

Section 12: Child Labor

No violations of child labor were uncovered during the investigation.

Section 15(a)(3) – Prohibiting Retaliation Under the FLSA

No violation found. Next Level Apparel did not retaliate against (b) (6), (b) (7)(C) as per evidence collected during the investigation. (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) (see exhibit E.8.a & E.8.m). At the time of hire (b) (6), (b) (7)(C) was informed of the 90 day probation period. (b) (6), (b) (7)(C) read the Employee Handbook as per (b) (6), (b) (7)(C) confirmation of understanding the terms of the At-Will status on 5/13/14 (see exhibits E.8.f). Furthermore, confirmed understanding legal benefits under State and Federal requirements such as: FMLA and Pregnant Disability Leave included in the handbook (see exhibits E.9.d-t). The employee handbook did not contain a section for Nursing Mother Act/CA Lactation Accommodations; however the company maintained general procedures on how they handle nursing mother request (see exhibits C.7). (b) (6), (b) (7)(C) however was provided a tour of the establishment including a tour of the break rooms where Federal and State Posters are located (see exhibit C.8.a New Hire Checklist).

(b) (6), (b) (7)(C) was terminated for making errors on the job as identified in (b) (6), (b) (7)(C) coaching form generated by (b) (6), (b) (7)(C) Supervisor. (b) (6), (b) (7)(C) (see exhibit E.8.g-l). Although (b) (6), (b) (7)(C) reported that (b) (6), (b) (7)(C) employer was aware of (b) (6), (b) (7)(C)

need to express milk, (b) (6), (b) (7)(C) testimony did not correspond with investigative findings. At the time of hire (b) (6), (b) (7)(C) provided a brief bio of (b) (6), (b) (7)(C) life where (b) (6), (b) (7)(C) identified (b) (6), (b) (7)(C) (see exhibits E.8.d: (b) (6), (b) (7)(C) bio summary and E.8.b; Email Introduction). (b) (6), (b) (7)(C) (see exhibit E.8.c). Employer alleged that (b) (6), (b) (7)(C) failed to identify (b) (6), (b) (7)(C) as a nursing mother during (b) (6), (b) (7)(C) employment.

Ms. Vinas did not advise (b) (6), (b) (7)(C) about specifically about the Nursing Mother Act since (b) (6), (b) (7)(C) identified (b) (6), (b) (7)(C). In addition, (b) (6), (b) (7)(C) direct supervisor and other employees interviewed did not have knowledge of (b) (6), (b) (7)(C) being a nursing mother or alleged that they ever saw (b) (6), (b) (7)(C) expressing (b) (6), (b) (7)(C) milk in the restrooms (see exhibits B.1.a-b & B.2.a-b). Nursing mothers informed their supervisor upon returning back to work of their need to express their milk and claimed to be accommodated with request (see exhibits B.1.a-b & B.4.a-b).

(b) (7)(E) Termination resulted due to (b) (6), (b) (7)(C) unsatisfactory work performance (see exhibits E.8.m).

DISPOSITION

A final conference was held at the establishment on September 9, 2014. Present at the final conference were WHI (b) (6), (b) (7)(C) and Margarita (Maggy) Vinas, Director of Human Resource. WHI discussed the regulation as well as answer general questions. A discussion was held on the termination of (b) (6), (b) (7)(C) and evidence provided. Ms. Vinas claimed that she had no knowledge that (b) (6), (b) (7)(C) was a nursing mother.

Ms. Vinas, explained that the company allows all employees that request time to express milk to an adequate space away from the restrooms. WHI (b) (6), (b) (7)(C) explained that although employees were provided with a private room (QC Room or Office Room), one employee was placed for a few days in an office room that was not free of visibility due to the large window. Ms. Vinas claimed that they corrected this practice by designating two dressing rooms in the Showroom rooms. These rooms are free from intrusion and away from the public (see exhibits E.12d-g). Dressing rooms have a padlock, electrical outlet and a small bench (see exhibits E.12.e). Restrooms and refrigerates are at a close proximity.

Ms. Vinas, admitted to the flaws in the system due to communications, yet confirmed that all employees are provided adequate breaks and a private room. She claimed that all employees are entitled to 2 paid breaks as per company policy. Although no violations were substituted, Ms. Vinas made the following changes to ensure consistency in communication nursing mothers. The employer implemented changes prior to the final conference:

In house training for all staffs on the Nursing Mothers Act-Federal and State on 8/19/14 both in English and Spanish (see exhibits E.10.a-o).

Modification to the Employee Handbook as of 8/22/14 to include Nursing Mother Act/ California Lactation Accommodations Law (see exhibits E.14.z).

Distribution of Wage and Hour Division Fact Sheet #73 in Spanish and English. Translated the CA Minimum Requirements of the CA Lactation Accommodation laws into Spanish and a breakdown of the different requirements under State and Federal Laws (see exhibits E.11.a-j).

Posters in the Female restrooms on guidance for Nursing Mothers that specified herself as a contact for any questions and accommodation request (see exhibits E.13; pictures of restrooms).

Manual timesheets will be provided to all Nursing Mother Breaks to document exact nursing mother breaks taken. Employees are going to continue to document regular rest and lunch breaks taken through their electrical timesheets.

Ms. Vinas also agreed to incorporate the nursing mother's paperwork for women return from pregnancy leave as a reminder upon return to work from maternity leave. WHI also explained that regulation under Section 7 (r) of the FLSA is applicable to nursing mothers covered until the child reached 12 months of age. Thus, not applicable for

(b) (6), (b) (7)(C)

A discussion was held on additional requirements under the FLSA. Publications 1312 was provided with specifications to rest breaks as defined in 29 CFR § 785.18 and lunch breaks as defined in 29 CFR § 785.19. In addition, a detail discussion was held on 541 exemptions identified in 29 CFR Part 541 Defining and Delimiting the Exemptions for Executive, Administrative, and Professional, Outside Sales, and Computer Employees; Final Rule. Ms. Vinas agreed to review all publications to ensure compliance with all sections of the law.

RECOMMENDATIONS

(b) (7)(E)

I recommend that this case be administratively closed.

NOTIFICATION

(b) (6), (b) (7)(C) was notified of investigative findings on 9/10/14. Fact sheet #73 mailed to her on 7/17/14 was briefly discussed and WHI (b) (6), (b) (7)(C) explained findings. (b) (6), (b) (7)(C) was not receptive to findings and hung up on WHI

(b) (6), (b) (7)(C)

PUBLICATIONS

The following publications were provided to Ms. Vinas Handy Reference Guide, Fact Sheets # 44, 73, 77A and 29 U.S.C. § 207(r). In addition, she received the following WH Publications WH1261, WH1262, WH1281, WH1282, WH1312, and WH 1318.

(b) (6), (b) (7)(C)

Wage and Hour Investigator
September 16, 2014

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1740369 Originating District: San Francisco District Office
Local Filing Number: 2014-316-08793 Investigating District: San Francisco District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 09/15/2014
Assignment Date: 09/15/2014

Employer Information

Trade Name: Department of Social Services - Oakland Legal Name: Department of Social Services - Oakland
Address: 1515 Clay Street EIN: 68-0297677
County: Alameda
NAICS Code: 6241
Oakland, CA94612 No. Of Employees: 50

Investigation Information

Period Investigated From: 08/23/2012 BNPI:
To: 08/22/2014 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

10.25(EST 4.25hrs)- FLSANM-cov. under section 3(s)(1)(B); (b) (7)(E) is non-exempt analyst. (b) (7)(E) was not provided a private space for expressing breast milk free from intrusion. Sec. 7 (r) vio (b) (7)(E) as additional IN's/ tour of est. revealed EE's used break rooms that did not lock. ER agreed to order locks for room and provided WHI work order. FC held on 09/3/14 w/ HR Orobosa Batis ; firm ATC by increasing communication w/ EE's and providing room free from intrusion. Rec admin close

WHI Signature: _____ Date: 09/19/2014

Reviewed By: _____ Date: _____

Work Address:
1515 Clay Street
Oakland, CA 94612

MODO Address:
744 P Street
Sacramento, CA.95814

FED EIN- 68-0297677

FLSNM NARRATIVE REPORT

Coverage

The subject firm is the Department of Social Services of California which is comprised over locations throughout the State.

Enterprise coverage under section 3(s)(1)(C) of the FLSA applies, as the firm is a local government agency. The firm employs over 50 employees throughout its various locations. (See Exhibit B1, C1, D2, D2A)

MODO

The Department of Social Services of California Administrative Office is located in Sacramento; CA. (b) (7)

Exemptions

No exemptions claimed.

Status of Compliance

Prior History: This is the first known investigation of the employer.

Investigative Period: August 23, 2012 through August 22, 2014.

Case Assignment: This case was initiated (b) (7)(E) (b) (6), (b) (7)(C)
is employed as Disability

Evaluation Services Administrator I, (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) had been employed with the Social Services Department (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) had left on maternity leave and had returned to work and that (b) (6), (b) (7)(C) was still in the first 12 months of the baby's birth. (b) (6), (b) (7)(C) states (b) (6), (b) (7)(C) offered a room to express milk that did not properly lock. (b) (6), (b) (7)(C) stated that co-workers had previously opened the door in the designated room (b) (6), (b) (7)(C) was in while expressing milk (b) (6), (b) (7)(C) also stated there were 2 other women which were due to return to the workplace shortly and begin to express milk as well. (See Exhibit B-1)

The current investigation was handled as a limited investigation which examined the scope of compliance applicable to nursing mother under section 7 of the FLSA.

Break Time for Nursing Mothers:

Section 7(r)(1)(A)- provides that nursing mothers are entitled to provide "a reasonable break time" for an employee to express milk "each time such employee has need to express milk".

Per Interviews, break time to express was not an issue. Employee was paid for all break times. Conversation with Branch Chief Manager, John Schrum, confirmed employees were allowed to use break times to express milk. (See Exhibit B1, C1)

Section 7(r)(1)(B)- requires employers to provide a "place other than a bathroom, that is shielded from view and free from intrusions from coworkers and the public, which may be used by an employee to express breast milk".

Per initial conference with Branch Chief Manager, John Schrum, the Social Services Department did not have any written policy relating specifically to break time for nursing mothers. Mr. Schrum explained he was aware that employees could use the designated closed door office to express. When WHI (b) (6), (b) (7)(C) inquired as to whether the room was free from intrusion, Mr. Schrum stated that he believed so. (Exhibit C1)

Per (b) (6), (b) (7)(C) interview, the office where (b) (6), (b) (7)(C) worked at (Oakland Location) did not have any locations other than a bathroom and the designated room to express milk. During the site tour, with WHI (b) (6), (b) (7)(C) and Branch Chief Schrum, the lack of lock to the designated room was emphasized. Upon noticing the door did not lock, Mr. Schrum immediately agreed to have a work order placed in order to install a lock to prevent potential unwanted intrusions. (See Exhibit B1, C1, D4)

Contact was made with (b) (6), (b) (7)(C) to discuss issues. WHI (b) (6), (b) (7)(C) explained that he met with the firm

and toured the site to solidify (b) (6), (b) (7)(C) concern. (b) (6), (b) (7)(C) was then notified by WHI (b) (6), (b) (7)(C) that the firm agreed to order and install locks on the nursing room. (b) (6), (b) (7)(C) was satisfied with the results of the investigation and stated (b) (6), (b) (7)(C) needed no further actions.

(b) (6), (b) (7)(C) (b) (7)(E) regarding the firm's failure to provide a space free from intrusion of co-workers and the public was (b) (7)(E) based on interviews a site tour, and information provided by the employer.

Section 6- Minimum Wage

No violations were established during the investigation.

Section 7- Overtime

Violation established. The firm failed to provide adequate space for a nursing mother free from intrusion.

Section 11:(RK)

No violations were established during the investigation.

Section 12: Child Labor

No violations of child labor were uncovered during the investigation.

Disposition:

A telephonic final conference was held on September 4th, 2014. Present at the final conference were WHI (b) (6), (b) (7)(C) and Orobosa Batis (Labor Relations Analyst). WHI discussed the regulation as well as answer any questions relating requirements.

WHI (b) (6), (b) (7)(C) explained that the investigation revealed the firm had violated Section 7(r) of the FLSA. Specifically the firm had failed to provide an adequate space in accordance with the regulations. WHI explained that employees had been interrupted during the process of expressing milk in the past due to the fact the designated room did not have locking doors.

WHI held a detailed discussion about rooms not having to be permanently dedicated to use for nursing mothers, however employee should be made aware of their rights, and who they can speak to set up a temporary location to be used for expressing and that they must be free from intrusion. Ms. Batis stated she understood the sensitivity of the issue. WHI (b) (6), (b) (7)(C) then confirmed the work order for the installation of the locks and offered Ms. Batis the opportunity to phone WHD if her firm had questions pertaining to the ACT moving forward.

Publications provided: Fact Sheet #44 and #73. DOL nursing mothers FAQ's website information.

Recommendation

It is recommended that this case be administratively closed (b) (7)(E)

(b) (6), (b) (7)(C)

Investigator

September 19th, 2014

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1759103 Originating District: Sacramento District Office
Local Filing Number: 2015-302-06639 Investigating District: Sacramento District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 04/27/2015
Assignment Date: 04/27/2015

Employer Information

Trade Name: Bufflo Wild Wings Legal Name: Buffalo Wild Wings Bar and Grill
Address: 3600 No Freeway Blvd EIN: 41-1957107
County: Sacramento
NAICS Code: 722110
No. Of Employees: (b) (4)
Sacramento, CA95834

Investigation Information

Period Investigated From: 04/24/2014 BNPI:
To: 05/13/2015 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Full Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

ENT COV-3(s)(1)(B).INV limited to Sec 7(r) FLSA-Break Time for Nursing Mothers.2009 PI.C not EX from Sec 7 FLSA.Sec 7(r) applicable.Viols:Sec 7(r)(1)B-Fail to provide adequate space, Nursing mother expressed milk in office not shielded from view from co-workers&the public.FC(7/24/15)held W/ HR Katie Caffon..ER will remove camera from office where nursing mothers express milk. No BWs/CMPs.ATC W/FLSA-Sec 7(r) notified.REC Admin close W/no further action.Pubs-see narrative.

WHI Signature: _____ Date: 07/24/2015

Reviewed By: _____ Date: _____

Buffalo Wild Wings
3600 N Freeway Blvd.
Sacramento, CA 95834
EIN: 41-1957107001

Case ID: 1759103
Case File:2015-302-06639

Correspondence to go to:

Kate Caffon
Team Member Relations Representative
5500 Wayzata Blvd.
Minneapolis, MN 55416
(952)540-2090 Phone

FLSANM NARRATIVE

REASON FOR INVESTIGATION

This investigation was based on (b) (7)(E) (b) (6), (b) (7)(C), (b) (7)(E) (b) (6), (b) (7)(E) was not granted (b) (6), (b) (7)(E) permission to express milk for (b) (6), (b) (7)(E) nursing child during work hours; therefore, violating (b) (6), (b) (7)(E) rights under the Break Time for Nursing Mothers Provision of the FLSA. (b) (7)(E) However, violation of Section 7(r)(1)B were found. Employer agreed to future compliance. *(See Ex. B-1.)*

COVERAGE

Buffalo Wild Wings is a full-service restaurant. It was founded in 1982 in Columbus, OH by Jim Disbrow and Scott Lowery. In 1994, current CEO and President, Sally Smith expanded the company. There are currently over 500 corporate locations and an additional 500 franchise locations throughout the United States and Canada. The location under investigation was incorporated in the State of California on December 17, 2012. Subject firm is operated by manager Mike Rodier. The firm currently employs (b) (4) employees. (See Exhibits C-1)

This establishment is corporate owned and is under corporate HR and payroll policies. Corporate officers are: Sally J. Smith, CEO, Mary Twinem, CFO, James Schmidt, COO, Judith Shoulak, VP of North America Operations, and Kathleen Benning, VP of Global Marketing.

All employees are covered on an enterprise basis under Section 3(s)(1)(a) for the entire investigative period. Two or more employees are engaged in interstate commerce as they routinely process credit card transactions.

PERIOD OF INVESTIGATION

04/24/14 through 05/13/2015.

MODO

The firm's main office is in Minneapolis, Minnesota. The Minneapolis DO is the MODO. (b) (7)(E)

[REDACTED]

PRIOR HISTORY

No prior history for this location was found in WHISARD.

EXEMPTIONS

Not applicable. (b) (6), (b) (7)(C) is a non-exempt employee paid on an hourly basis and is therefore subject to Section 7 of the FLSA and the protections of the Break Time for Nursing Mothers provision of the FLSA. ***See Ex. B-1.***

STATUS OF COMPLIANCE

Section 7(r)(1)(A) – Reasonable Break Time

No violation found. (b) (6), (b) (7)(C) was provided sufficient time to express (b) (6), (b) (7)(C) milk beyond the time designated as (b) (6), (b) (7)(C) break and lunch periods ***See Ex. B-1- and C-1.***

Section 7(r)(1)(B) – A Place, Other than a Bathroom, Shielded from View and Free from Intrusion

Violation found. (b) (6), (b) (7)(C) was allowed to express milk in the manager's office. The office could be locked from the inside; therefore, free from intrusion from co-workers and the public. A sign was placed on the door to inform others that the room was in use. Also, the window on the office door was covered with colored construction paper in order to shield from view. However, a video camera is in place in the office to monitor theft. This is a violation of Section 7(r)(1)(B) ***See Ex. B-1, B-2, C-1.***

Section 15(a)(3) – Prohibiting Retaliation Under the FLSA

Violation not found. (b) (6), (b) (7)(C)(b) (7)(E) had been terminated because of (b) (6), (b) (7)(C) request to be allowed breaks as needed to express milk. Employee interview statements, manager statements, as well as time records indicated (b) (6), (b) (7)(C) did not return to work after requesting time off from (b) (6), (b) (7)(C) manager, (b) (6), (b) (7)(C). Therefore, (b) (6), (b) (7)(C) was terminated under the status of job abandonment.

DISPOSITION

Telephone conference was held on July 24, 2015 with HR Katie Caffon and WHI Alfaro to discuss (b) (6), (b) (7)(C) (b) (7)(E), as well as what steps needed to be taken in order to come into compliance. The statutory language and Fact Sheet #73 was reviewed. Ms. Katie Caffon expressed that the following steps had already been taken:

The camera that is in the office where nursing mother employees are allowed access to express milk will be completely turned away from the view of the office and faced directly towards the wall when the office is in use by such employees.

See Ex. C-1.

Ms. Caffon also agreed to the following in order to comply in the future:

- 1) To allow (b) (6), (b) (7)(C) break time to pump (b) (6), (b) (7)(C) milk in addition to (b) (6), (b) (7)(C) designated breaks and lunch if necessary. ***See Ex. C-1.***
- 2) To not discriminate or retaliate against (b) (6), (b) (7)(C)(b) (7)(E) ***See Ex. C-1.***
- 3) To not designate a bathroom or locker room as a place for a nursing mother to express her milk. ***See Ex. C-1.***

On July 24, 2015, WHI toured the office designated as the place for employees to express milk and confirmed that it has a door with a lock, no windows, and camera is able to be removed while in use.

RECOMMENDATIONS

It is recommended the case be administratively closed.

(b) (6), (b) (7)(C) NOTIFICATION

(b) (6), (b) (7)(C) was notified of the investigative findings on 07/24/2015.

PUBLICATIONS

The following publications were discussed and mailed on 07/23/2015: Handy Reference Guide, Fact Sheets # 44, 73, 77A and 29 U.S.C. § 207(r).

(b) (6), (b) (7)(C)

Wage and Hour Investigator

07/24/2015

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1759751 Originating District: Sacramento District Office
Local Filing Number: 2015-302-06658 Investigating District: Sacramento District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 05/04/2015
Assignment Date: 05/04/2015

Employer Information

Trade Name: PDQ Automatic Transmission Parts Legal Name: PDQ Automatic Transmission Parts, Inc.
Address: 8380 Tiogawoods St. EIN: 68-0330777
County: Sacramento
NAICS Code: 336350
Sacramento, CA95828 No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 05/01/2014 BNPI:
To: 05/05/2015 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Compliance (no violations found) Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FMLA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FMLA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	
Total Violations Under FMLA:	3						\$0.00

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

(b) (7)(E) case, FLSANM. Cov under 3(s)(1) and (b) (6), (b) (7)(D) is a nursing mother with need to express milk for (b) (6) baby. (b) (7)(E) that space to express milk was not adequate. No violations, space meet requirements of the Act. (b) (7)(E) was not returned to same position from FMLA. ER is covered and (b) (6) was an eligible EE, however (b) (6), (b) (6) did not return before 12-weeks, (b) (6) was not covered by the Act. Issues with policy review. ER ATC. Pubs: HRG, FS#77, 44, 28, FAQ NM, FMLA EE Guide, 825,. Rec. closing.

WHI Signature: _____ Date: 05/14/2015

Reviewed By: _____ Date: _____

2015-302-06658

**PDQ Automatic Transmission Parts, Inc.
8380 Tiogawood Street
Sacramento, CA 95828
FID# 68-0330777**

FLSANM Narrative

REASON FOR INVESTIGATION

This investigation was conducted (b) (7)(E) (b) (6), (b) (7)(C) under the Patient Protection and Affordable Care Act amendment to the FLSA (Break Time for Nursing Mothers). (b) (6), (b) (7)(C) (b) (7)(E) (b) (6), (b) (7)(C) employer failed to provide an adequate space to express milk. (b) (7)(E) The employer meet the requirements under the Act; the location was functional (had an outlet, chair and table); it was shielded from view, and free from any intrusion from coworkers and the public. (See CA Information Tab)

COVERAGE

PDQ Automatic Transmission Parts, Inc. is a covered employer under section 3(s)(1). The annual dollar volume for 2012 was (b) (4) ; 2013 was (b) (4) and 2014 was (b) (4) The company has (b) (4) employees and ships transmission parts to customers within California and out-of-state to Oregon, Washington and Nevada. (b) (6), (b) (7)(C) is specially covered under the Break Time for Nursing Mothers provision of the FLSA because (b) (6), (b) (7)(C) is a nursing mother with a need to express milk (b) (6), (b) (7)(C) (See Exhibit B-1, C-1, C-2, C-3)

PERIOD OF INVESTIGATION

Period of investigation was limited to the time when (b) (6), (b) (7)(C) was covered under the Break Time for Nursing Mothers provision, beginning the day (b) (6), (b) (7)(C) returned to work after giving birth (b) (6), (b) (7)(C) FMLA (b) (7)(E) and FMLA policy review (See FMLA narrative): May 1, 2014 to May 5, 2015.

MODO

The Sacramento district office is the MODO. The business has two locations. (b) (7)(E) (See Exhibit D-1)

PRIOR HISTORY

A search in WHISARD does not indicate any prior investigations with the business.

EXEMPTIONS

Not applicable. (b) (6), (b) (7)(C) is a non-exempt employee, paid on an hourly basis and is therefore subject to Section 7 of the FLSA and the protections of the Break Time for Nursing Mothers provision of the FLSA. (See Exhibit B-1, D-5)

STATUS OF COMPLIANCE

Section 7(r)(1)(B) – A Place, Other than a Bathroom, Shielded from View and Free from Intrusion

No violation. At the time (b) (7)(E), employer's designated lactation room was an office in the building. The space met the requirements of the Act; the location was functional, it had an outlet, desk, and chair; the location was available when needed to express milk and it was shielded from views and free from intrusion from co-workers and the public. (See sketch, Exhibit D-20)

DISPOSITION

A final conference was held with Nicole Lawson – Office Manager and John Hicks- President on May 6, 2015 at the employer's establishment.

WHI (b) (6), (b) (7)(C) reviewed in detail Fact Sheet #73 and the section on Nursing Mothers in the Handy Reference Guide. WHI (b) (6), (b) (7)(C) informed the employer that Nursing Mothers must be provided a reasonable break time to express milk for (b) (6), (b) (7)(C) nursing child for one year after the child's birth. WHI also informed the employers that breaks needed to be provided as needed by the Nursing Mother.

WHI (b) (6), (b) (7)(C) informed the employer that bathrooms and locker rooms were not a permissible location under the Act and for the Department. WHI reviewed the requirements under the Act regarding an adequate location; must be a functional space for expressing milk, space is shield from view and from any intrusion from co-workers and the public.

WHI (b) (6), (b) (7)(C) informed the employer that bon fide 541 exempt employees were not covered by the Nursing Mother provision in addition employers with fewer than 50 employees were not subject to the FLSA break time requirement if compliance with the provision impose an undue hardship.

Next WHI (b) (6), (b) (7)(C) informed the employers that the FLSA breaks for nursing mothers do not need to be compensated however if the employer already provided a compensated break, an employee who uses that break time

to express milk must be compensated in the same way that other employees are compensated for break time. In addition, the FLSA requirement that the employee must be completely relieved from duty or else the time must be compensated as work time applies.

Lastly, WHI (b) (6), (b) (7)(C) informed the employers it was a violation for any person to “discharge or in any other manner discriminate against any employee because such employee had filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act, or has testified or is about to testify in any such proceedings, or has served or is about to serve on an industry committee.”

In addition, WHI discussed the provisions of the Act; MW, OT, RK and CL.

The employers agreed to comply with the FLSANM provision and to update the employee handbook to include requirements under the Act.

RECOMMENDATIONS

(b) (7)(E) I recommend that this case be administratively closed.

COMPLAINANT NOTIFICATION

On 5/5/2015, WHI (b) (6), (b) (7)(C) spoke with (b) (6), (b) (7)(C) regarding status of the investigation and confirmed that the employer's space meet the requirements of the law. (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) was concerned about the door not locking. WHI (b) (6), (b) (7)(C) informed (b) (6), (b) (7)(C) that the Act did not require for the door to be locked and by placing a sign on the door would meet the requirement. WHI informed (b) (6), (b) (7)(C) that the employer was willing to place a lock on the door if (b) (6), (b) (7)(C) was willing to return to work. (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) did not want to return to work.

PUBLICATIONS

The following publications were discussed and provided on May 5, 2015 and May 13, 2015: Handy Reference Guide, Fact Sheets #44, #77A, #73 and Frequently Asked Questions for Nursing Mothers, CL 101, 785, 778, WH-1325.

(b) (6), (b) (7)(C)

Wage & Hour Investigator

5/14/2015

2015-302-06658

**PDQ Automatic Transmission Parts, Inc.
8380 Tiogawood Street
Sacramento, CA 95828
FID# 68-0330777**

FMLA Narrative

REASON FOR INVESTIGATION

(b) (6), (b) (7)(C) (b) (7)(E) was not returned to (b) (6), (b) (7)(C) same or equivalent position upon returning from FMLA leave. (b) (6), (b) (7)(C) (b) (7)(E) as (b) (6), (b) (7)(C) did not return prior to the 12-weeks under the Act. (See Exhibit B-1)

COVERAGE

PDQ Automatic Transmission Parts is a private sector employer who employs 50 or more employees in 20 or more workweeks in the current or preceding calendar year. (See Exhibit C-1)

Main Office District Office

The Sacramento District Office is the MODO for the business. The business has two locations. (b) (7)(E)
(b) (6), (b) (7)(C) (See Exhibit D-1)

Limits

This investigation was limited to (b) (6), (b) (7)(C) FLSANM (b) (7)(E) (See FLSANM narrative), FMLA (b) (7)(E) and policy review for the business.

History

A search in WHISARD does not indicate any prior history with the business.

ELIGIBILITY

(b) (6), (b) (7)(C) is an “eligible employee” and works for a “covered employer”. (b) (6), (b) (7)(C) was hired (b) (6), (b) (7)(C) worked for PDQ for at least 12 months prior to requesting leave, within those 12 months (b) (6), (b) (7)(C) worked at least 1,250 hours and worked at a location with 50 or more employees. (See Exhibit B-1, C-1,

D-15)

EMPLOYEE NOTIFICATION

According to (b) (6), (b) (7)(C) informed (b) (6), (b) (7)(C) direct supervisor (b) (6), (b) (7)(C) was pregnant (b) (6), (b) (7)(C). About a month later, (b) (6), (b) (7)(C) provided (b) (6), (b) (7)(C) with a pregnancy verification note from Kaiser. According to Mr. John Hicks-President and Mr. Tracy Hicks -Vice President, (b) (6), (b) (7)(C) informed the company of (b) (6), (b) (7)(C) due date (b) (6), (b) (7)(C) (See Exhibit B-1, C-1)

From the information gathered, no Notice of Eligibility was provided at the time (b) (6), (b) (7)(C) informed the company of her due date.

REASON FOR THE LEAVE

(b) (6), (b) (7)(C) FMLA qualifying reason was for a serious health condition related to pregnancy and for the birth (b) (6), (b) (7)(C) (See Exhibit B-1, C-1)

STATUS OF COMPLIANCE

a. (b) (6), (b) (7)(C) (b) (7)(E) (b) (6), (b) (7)(C) was not returned to (b) (6), (b) (7)(C) same or equivalent position upon returning from family medical leave.

b. (b) (7)(E) as (b) (6), (b) (7)(C) was out more than the 12 weeks required by the Act. (b) (6), (b) (7)(C) was out consecutively from January 27, 2015 to May 1, 2015 (13 weeks and 3 days).

c. The employer had violations in regards to Employer Notice Requirements under Section 825.300. (b) Eligibility Notice, the employer failed to provide an eligibility notice to (b) (6), (b) (7)(C) within 5 business days of when they acquired knowledge of the FMLA qualifying reason. (c) Rights and Responsibilities Notice was not provided to (b) (6), (b) (7)(C) and (d) Designation Notice was not provided within 5 business days of when (b) (6), (b) (7)(C) submitted the certification. (See B-1, C-1, D-7, D-8)

d. FMLA Policy Review

Violations were revealed in the investigation with the FMLA policy. The employer's FMLA policy failed to include the following qualifying reason under 825.112: For any qualifying exigency arising out of the fact that a spouse, son, daughter or parent is a military member on covered active duty or call to cover active duty status and to care for a covered service member with a serious injury or illness of the employee is a spouse, son, daughter, parent, or next of kin of the covered service member. (See Exhibit D-19P)

In addition, the employer was requiring in their handbook that: If there is a medical need, leave may be taken intermittently in minimum intervals of 8 hours or on a reduced work schedule basis (where the employee works fewer hours per day and counts those hours towards the 12 week entitlement) to care for a sick family member or for an employee's own serious health condition. Also, intermittent leave for the birth, adoption or foster care of a child generally must be taken in two-week increments. (See Exhibit D-19R)

This policy in the employee handbook is not consistent with the FMLA regulations. Section 825.205 Increments of FMLA leave for intermittent or reduced schedule leave: (a) minimum requirement. (1) When an employee takes FMLA leave on an intermittent or reduced leave schedule basis, the employer must account for the leave using an increment no greater than the shortest period of time that the employer uses to account for use of other forms of leave provided that it is not greater than one hour provided further that an employee's FMLA leave entitlement may not be reduced by more than the amount of leave actually taken.

e. The employer had violations under 825.300 and policy issues under 825.112 and 825.205.

f. No monetary findings were computed as the complainant's allegation was not substantiated due to not being covered by the Act because she surpassed her 12 week entitlement.

DISPOSITION

On May 13, 2015 a final conference was held with Tracy Hicks-Vice President, Nicole Lawson-Office Manager, Jackie Kashow- A/R Assistant and from Wage and Hour, (b) (6), (b) (7)(C) - Wage and Hour Investigator at the employer's establishment.

WHI (b) (6), (b) (7)(C) reviewed the regulation with the employers. WHI included topics of coverage, eligible employees, leave entitlement, notices, certification, job restoration and health benefits and retaliation. WHI also pointed out the employer requirements that were not properly designated to (b) (6), (b) (7)(C) (no eligibility notice, no rights and responsibility notice, and not providing designation notice on time). In addition, WHI discussed the deficiencies in the employer's policy on FMLA and specially reviewed the qualifying reasons and increments of FMLA leave (section 825.112 and 825.205).

The employer agreed to comply and change policy in the employee handbook in approximately 30 days and also agreed to future compliance.

(b) (6), (b) (7)(C) NOTIFICATION

On 5/5/2015, WHI (b) (6), (b) (7)(C) spoke with (b) (6), (b) (7)(C) regarding status of the investigation and informed (b) (6), (b) (7)(C) that since (b) (6), (b) (7)(C) took more than 12 weeks of leave (b) (6), (b) (7)(C) no longer was protected by the Act.

PUBLICATIONS

The following publications were discussed and provided on May 13, 2015: Handy Reference Guide, Fact Sheets #44, #77A, #28, #28A,B, C, D, E, F, G, H, I, K, M(a), M(b), M(c), #77B, WH-381, WH-382, WH-380F, WH-380E, WH-385, WH-385V, Need Time and Employee's Guide to FMLA and Regulation 825.

(b) (6), (b) (7)(C)

Wage & Hour Investigator

5/14/2015

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1759754 Originating District: Sacramento District Office
Local Filing Number: 2015-302-06659 Investigating District: Sacramento District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 05/04/2015
Assignment Date: 05/04/2015

Employer Information

Trade Name: Express Employment Professionals

Legal Name: Modesto Staffing Consultants, Inc.

Address: 300 Banner Ct., Ste. # 2

EIN: 20-8077955

County: Stanislaus

NAICS Code: 561320

Modesto, CA95356

No. Of Employees: (b) (6)

Investigation Information

Period Investigated From: 04/23/2015 BNPI: 0
To: 05/08/2015 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: 07/31/2015
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	1	1	\$576.00	\$576.00	\$576.00	\$576.00	

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	1	Unduplicated Employees Agreed:	1
Total Amount BWs Computed:	\$576.00	Total Amount BWs Agreed:	\$576.00
Total Amount LDs Computed:	\$576.00	Total Amount LDs Agreed:	\$576.00

Conclusions & Recommendations:

(b) (7)(E) FLSANM. COV: FLSA 203(s)(1)(A) & EEs hndlng goods trvng in intrste commrce. EX: N/A. SOC: FLSANM 215(a)(3) Retaliation - (b) (7)(E) removed from work @ 3rd party ER Royal Summit after asserting rights; due \$576 for 8 days of nonwork @ (b) (7)(E)/hr & equal amnt in LDs = \$1152. DISP: FC 07/10/15 @ est w/ ER Ms. Shannon Gilbert-Weaver & franchisor Express reps. ATFC. ATP by 07/31/15. Pubs: See narrative.

WHI Signature: _____ Date: 07/17/2015

Reviewed By: _____ Date: _____

**Modesto Staffing Consultants, Inc.
dba Express Employment Professionals
EIN: 20-8077955**

300 Banner Court, Suite 2
Modesto, CA 95356
Ms. Shannon Gilbert-Weaver, Owner
(209) 522-1574

**Case ID #1759754
Case File #2015-302-06659**

Points of Contact:

Ms. Shannon Gilbert-Weaver
300 Banner Court, Suite 2
Modesto, CA 95356
(209) 606-2767 (cell)

Mr. Russ Moen, Vice President of HR
Express Employment Professionals (Franchisor)
(405) 840-5000 x4292

FLSA Nursing Mothers Narrative

Reason for Investigation: This limited investigation was initiated by (b) (7)(E) [REDACTED] [REDACTED] stated that (b) (6), (b) (7)(C) [REDACTED] worked for temporary employment agency Express Employment Professionals and was placed at the client site, Royal Summit. (b) (6), (b) (7)(C) [REDACTED] (b) (7)(E) [REDACTED] requested time to express milk, and Royal Summit refused to allow (b) (6), (b) (7)(C) [REDACTED] to do so. (b) (6), (b) (7)(C) [REDACTED] stated that (b) (6), (b) (7)(C) [REDACTED] contacted Express Employment Professionals, and Royal Summit allowed (b) (6), (b) (7)(C) [REDACTED] to take a 15 minute break to express milk. (b) (6), (b) (7)(C) [REDACTED] further stated that at the end of the day, Express Employment Professionals called and told (b) (6), (b) (7)(C) [REDACTED] not to go back to work at Royal Summit.

A concurrent FLSANM investigation was conducted on joint employer Royal Summit. *(See Case ID #1760012)*

(b) (7)(E) [REDACTED] (b) (6), (b) (7)(C) [REDACTED] was found to be owed \$576.00 in back wages and an equal amount in liquidated damages as a result of (b) (6), (b) (7)(C) [REDACTED] termination from Royal Summit.

COVERAGE:

Modesto Staffing Consultants, Inc. dba Express Employment Professionals (hereinafter Modesto Staffing) opened and incorporated in December 2006 under (b) (7)(E) [REDACTED] owner Ms. Shannon Gilbert-Weaver. *(See Exhibits C-1 through C-2)* The business functions as a temporary employment agency, and it is a franchisee of Express Employment

Professionals (hereinafter Express), which is located in Oklahoma City, OK. *(See Exhibit C-1)* Ms. Gilbert-Weaver meets the definition of an employer under Section 203(d) of the FLSA because she oversees and employs permanent and temporary workers. *(See Exhibits B-1 through B-2 and C-1)* Currently, Modesto Staffing has (b) (4) permanent employees and controls (b) (4) temporary staff that are paid by Express. *(See Exhibit C-1)*

The annual gross sales (ADV) for Modesto Staffing are as follows: 2014 - (b) (4) ; 2013 - (b) (4) ; 2012 - (b) (4) , and temporary employees are jointly employed by Royal Summit, whose employees directly affect the production of goods, such as tin boxes and Valentine's Day candy bouquets, that are shipped to various parties, (b) (4) throughout the United States. *(See Exhibits B-1, C-1 and C-4)* As such, the firm is enterprise covered under Section 203(s)(1)(A) of the Fair Labor Standards Act.

Period of Investigation: 04/23/2015 to 05/08/2015.

Prior History: This is the first investigation of Modesto Staffing by the Wage & Hour Division.

MODO: Sacramento District Office. There are no other branches.

Joint Employment:

Modesto Staffing & Express:

Modesto Staffing is a franchisee of Express. An analysis of the factors set forth in 29 CFR 500.20(h)(5)(iv)(A) through (G) and 29 CFR 791 determined that a joint employment relationship **does** exist between Modesto Staffing and Express.

The following joint employment factors were met: **A through E, and G**

Factor Met – The power to either alone or through control of the employer to direct, control or supervise the workers. Although Modesto Staffing considers the temporary employees (“temps”) to be Express', Modesto Staffing directs, controls, and supervises the temps on a day-to-day basis. Express issues their pay, and per Modesto Staffing, has the ability to control the temps; however, control is typically left to the franchisee. Express has a proprietary computer program and guidebook that Modesto Staffing must use to determine how to hire, place, and terminate temps; however, Modesto Staffing performs such actions independently and without approval from Express. *(See Exhibit C-1)*

Factor Met – The power either alone or in addition to another employer, directly or indirectly, to hire or fire, modify the employment conditions, or determine the pay rates or the methods of wage payment for workers. Modesto Staffing advertises for and recruits the temps. Interested individuals fill out an online application through Express' system. Modesto Staffing and its clients negotiate the pay rate of the

temps, and Modesto Staffing decides where to place temps. Per Ms. Gilbert-Weaver, Express typically does not set pay rates. However, Modesto Staffing is required to follow franchise procedures and use Express' proprietary program to hire, place, and terminate temps. Express issues payment to all temps, and Express determines the method of payment. *(See Exhibit C-1)*

Factor Met – **The degree of permanency and duration of the relationship of the parties.** Modesto Staffing is a franchisee of and does business as “Express Employment Professionals”. Modesto Staffing does not hire or control temps outside of those provided by Express. Express provides Modesto Staffing with an HR contact that is available to provide guidance on such issues as FLSA Nursing Mother requirements and payroll. Express also sends out auditors to ensure that Modesto Staffing is run per franchise regulations. *(See Exhibit C-1)*

Factor Met – **The extent to which the services rendered by the workers are repetitive, rote tasks requiring skills which are acquired with relatively little training.** Neither Express nor Modesto Staffing provides training to temps. Clients who choose to use Modesto Staffing temps may provide on-the-job training as necessary. *(See Exhibit C-1)*

Factor Met – **Whether the activities performed by the workers are an integral part of the overall business operation of the employer.** The work performed by the temps is integral to the overall business operations of Express and Modesto Staffing, which are both staffing agencies. *(See Exhibit C-1)*

Factor Not Met – **Whether the work is performed on Express' premises, rather than on premises owned or controlled by another business entity.** Modesto Staffing controls the temps' day-to-day work and decides where to send each temp. Express does not have direct control over the worksites that temps are sent to. *(See Exhibit C-1)*

Factor Met – **Whether Express undertakes responsibilities in relation to the workers which are commonly performed by employers.** Express pays temps directly. Express and Modesto Staffing both keep employment records; however, the majority of the information is kept by Express. Express administers the FMLA and workers' compensation insurance policies. Modesto Staffing must follow the guidance set by Express regarding hiring, placing, and terminating temps. No tools or materials are provided to temps by Express or Modesto Staffing. *(See Exhibit C-1)*

Modesto Staffing & Royal Summit:

Modesto Staffing provides temporary employees to employer Royal Summit. An analysis of the factors set forth in 29 CFR 500.20(h)(5)(iv)(A) through (G) and 29 CFR 791 determined that a joint employment relationship **does** exist between Modesto Staffing and Royal Summit.

The following joint employment factors were met: **A through F**

Factor Met – The power to either alone or through control of the employer to direct, control or supervise the workers. Modesto Staffing recruits and supervises the temporary employees (“temps”). Once temps are placed at a client's worksite, the client also directs, controls, and supervises the temps. However, if a temp is unable to report to work at a client's site, the temp is required to contact Modesto Staffing via the 24-hour on-call phone line, and Modesto Staffing will inform the client. Temps placed at Royal Summit were directly controlled by a line supervisor (temp) who reported to and got instructions from Royal Summit employees and the Royal Summit owner. Royal Summit determines the start and stop times and locations of work for temps. *(See Exhibits B-1 and C-1)*

Factor Met – The power either alone or in addition to another employer, directly or indirectly, to hire or fire, modify the employment conditions, or determine the pay rates or the methods of wage payment for workers. Royal Summit has the power to request that certain temps be removed from the jobsite and Modesto Staffing will do so. However, Royal Summit does not have a say in whether a temp continues to work at Modesto Staffing. Modesto Staffing has the power to terminate the temp and will take into consideration performance at Royal Summit and other clients' sites before doing so. When temps are at the Royal Summit jobsite, they report to a line supervisor (provided by Modesto Staffing) who reports to Royal Summit staff. The line supervisor works in an office provided by Royal Summit. Royal Summit and Modesto Staffing negotiate the pay rate, and method of payment is set by Modesto Staffing and Express. *(See Exhibits B-1 and C-1)*

Factor Met – The degree of permanency and duration of the relationship of the parties. Royal Summit has been a client of Modesto Staffing since 2012. There is no written contract. *(See Exhibits B-1 and C-1)*

Factor Met – The extent to which the services rendered by the workers are repetitive, rote tasks requiring skills which are acquired with relatively little training. Temps sent to work for Royal Summit are not required to have any experience. Training is provided by Royal Summit on the jobsite. *(See Exhibits B-1 and C-1)*

Factor Met – Whether the activities performed by the workers are an integral part of the overall

business operation of the employer. Royal Summit provides fulfillment and co-packing services. Temps work on the production line, and their work is integral to the overall business operations of Royal Summit. *(See Exhibits B-1 and C-1)*

Factor Met – Whether the work is performed on Royal Summit's premises, rather than on premises

owned or controlled by another business entity. Temps work at Royal Summit's warehouse on products that are sent out by Royal Summit. *(See Exhibits B-1 and C-1)*

Factor Not Met – Whether Royal Summit undertakes responsibilities in relation to the workers which

are commonly performed by employers. Modesto Staffing (through Express) administers the FMLA and workers' compensation policies. Modesto Staffing (through Express) pays the temps. Temps fill out a Royal Summit timecard, per an agreement between Royal Summit and Modesto Staffing. Any required materials and tools are provided by Royal Summit. *(See Exhibits B-1 and C-1)*

EXEMPTIONS:

None claimed. (b) (6), (b) (7)(C) is an hourly, non-exempt employee and is subject to Section 207 of the Act. *(See Exhibits B-2, C-1, and D-2 through D-3)* (b) (6), (b) (7)(C) is therefore entitled to protection under the nursing mother provisions of Section 207(r).

STATUS OF COMPLIANCE:

(b) (6), (b) (7)(C) (b) (7)(E) *(See Exhibit B-2)* (b) (6), (b) (7)(C) is a nursing mother who needs to express milk for (b) (6), (b) (7)(C) child. It is less than 1 year after the child's birth. *(See Exhibit B-2)*

Section 207(r)(1)(A) & (B) – Reasonable Break Time & Place, Other than a Bathroom, Shielded from View and Free from Intrusion: No violation found.

Due to contradicting statements, violations could not be (b) (7)(E) A review of the events that occurred is as follows: *(See Exhibits B-1 through B-2, C-1, and D-6)*

(b) (6), (b) (7)(C) started working for Modesto Staffing (through Express) in February 2015. (b) (6), (b) (7)(C) stated that upon hire, (b) (6), (b) (7)(C) told someone (either the hiring agent (b) (6), (b) (7)(C) or Operations Manager (b) (6), (b) (7)(C)) at Modesto Staffing that (b) (6), (b) (7)(C) was a nursing mother.

Operations Manager (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) hired (b) (6), (b) (7)(C), and Modesto Staffing was not made aware that (b) (6), (b) (7)(C) was a nursing mother. Modesto Staffing further stated that, “[another client] PSC has a room for women who needed to pump. That’s the only place we’ve sent women who needed to pump (when we knew about it).”

On Thursday, 04/23/2015, (b) (6), (b) (7)(C) was sent to work at Royal Summit. (b) (6), (b) (7)(C) worked 8 hours. (b) (6), (b) (7)(C) expressed milk in (b) (6), (b) (7)(C) car during the 11 AM to 11:30 AM lunch period. (b) (6), (b) (7)(C) stated (b) (6), (b) (7)(C) does this for other jobs as well, in order to avoid disruption of the business.

On Friday, 04/24/2015, (b) (6), (b) (7)(C) returned to work at Royal Summit. Royal Summit decided to provide lunch to all employees, so the lunch break was moved to between 11:45 AM to 12:00 PM. At approximately 10 AM, (b) (6), (b) (7)(C) told the line supervisor (Modesto Staffing employee through Express), (b) (6), (b) (7)(C), that (b) (6), (b) (7)(C) needed to express milk. (b) (6), (b) (7)(C) was initially denied (b) (6), (b) (7)(C) request.

- (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) was told not to leave the floor, unless (b) (6), (b) (7)(C) wanted to be terminated.
- Modesto Staffing stated that (b) (6), (b) (7)(C) was a “lead; (b) (6), (b) (7)(C) wasn’t expected to know (b) (6), (b) (7)(C) needed to pump.”
- Royal Summit stated that (b) (6), (b) (7)(C) initially did not allow (b) (6), (b) (7)(C) to leave the floor because (b) (6), (b) (7)(C) did not realize (b) (6), (b) (7)(C) was a nursing mother. Royal Summit then stated that (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) was a nursing mother and said that (b) (6), (b) (7)(C) was “discriminating against (b) (6), (b) (7)(C) told (b) (6), (b) (7)(C) would see what (b) (6), (b) (7)(C) could do.

(b) (6), (b) (7)(C) left the floor to talk to the available Royal Summit employee. (b) (6), (b) (7)(C) went to the restroom and contacted Modesto Staffing via text message. Modesto Staffing contacted Express for further guidance. Modesto Staffing then contacted (b) (6), (b) (7)(C) and explained the nursing mother provisions. (b) (6), (b) (7)(C) spoke to (b) (6), (b) (7)(C).

- (b) (6), (b) (7)(C) (b) (7)(E) (b) (6), (b) (7)(C) told (b) (6), (b) (7)(C) to return by 11 AM, which meant (b) (6), (b) (7)(C) had 15 minutes to express milk. Royal Summit stated that (b) (6), (b) (7)(C) asked (b) (6), (b) (7)(C) how long it normally took, and the (b) (6), (b) (7)(C) said that 15 minutes was sufficient.
- (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) typically expressed milk in (b) (6), (b) (7)(C) car during (b) (6), (b) (7)(C) lunch break. (b) (6), (b) (7)(C) (b) (7)(E) (b) (6), (b) (7)(C) did not offer (b) (6), (b) (7)(C) a place to express milk. Royal Summit stated that (b) (6), (b) (7)(C) asked if (b) (6), (b) (7)(C) needed a place to express milk and if (b) (6), (b) (7)(C) wanted to do so inside the office. Per Royal Summit, (b) (6), (b) (7)(C) told (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) “normally pumped in the car” and that (b) (6), (b) (7)(C) was fine with doing that.

Section 215(a)(3) – Retaliation Under the FLSA: Violation found.

Modesto Staffing was unable to substantiate their claim that (b) (6), (b) (7)(C) was removed from the worksite for performance and attitude issues. *(See Exhibits B-1 through B-2, C-1, and D-6)* Modesto Staffing, or its joint employer Royal Summit, retaliated against (b) (6), (b) (7)(C) for asserting (b) (6), (b) (7)(C) rights. (b) (6), (b) (7)(C) is due equitable

relief in the form of payment of wages lost, as per Section 216(b).

A review of the events that occurred is as follows: *(See Exhibits B-1 and C-1)*

At the end of the day, (b) (6), (b) (7)(C) told all temporary employees to return the following Monday. Upon leaving work, (b) (6), (b) (7)(C) was contacted by Modesto Staffing.

- (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) asked if (b) (6), (b) (7)(C) should return to Royal Summit and Modesto Staffing said, "Why don't you wait until PSC [another client] comes back with work and not go into Royal Summit next week?"
- Modesto Staffing stated that Royal Summit did not want (b) (6), (b) (7)(C) to return due to performance and attitude issues. Modesto Staffing stated that they told (b) (6), (b) (7)(C) to wait for a new job that was coming up.
- Royal Summit stated that although (b) (6), (b) (7)(C) had some performance issues, they were expecting (b) (6), (b) (7)(C) back the next week. (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) normally gives temporary employees a week before judging their performance and deciding whether they should be removed from the jobsite. Royal Summit Owner Mr. Bret de St. Jeor stated that Modesto Staffing called (b) (6), (b) (7)(C) and "said that (b) (6), (b) (7)(C) was scheduled to go back to another employer and asked if it would be ok if they pulled (b) (6), (b) (7)(C) out."

Neither Modesto Staffing nor Royal Summit had evidence to support the claim of performance or attitude issues. No substitute temporary employee was sent to Royal Summit.

(b) (7)(E)

[REDACTED]

(b) (6), (b) (7)(C) is owed 8 days of lost wages (b) (7)(E) = \$576.00

Note: Although (b) (6), (b) (7)(C) did not work overtime in any workweek, per Section 216(b) of the Act, (b) (6), (b) (7)(C) is due equitable relief in the form of payment of wages lost. (b) (7)(E)

Section 215(a)(3) Back Wages: \$576.00

FLSA Liquidated Damages: \$576.00

DISPOSITION:

On 07/10/2015, a final conference was held at the Modesto, CA establishment. Present during the conference were Modesto Staffing Owner Ms. Shannon Gilbert-Weaver, Express Vice President of Human Resources Mr. Russ Moen, Express Manager of HR Research Ms. Amy VanHooser, and Express Manager of HR Training Mr. Monte Farrar. Mr. Moen, Ms. VanHooser, and Mr. Farrar were present via phone conference. Final conference notes were taken. *(See Exhibit D-11)*

WHI (b) (6), (b) (7)(C) discussed the following:

FLSA provisions, including minimum wage, overtime, recordkeeping, child labor, and coverage.

FLSA Nursing Mother provisions, including a discussion of the following statement and related exemptions:

Covered employers must provide reasonable break time for an employee to express breast milk for her nursing child for 1 year after birth each time there is a need to express milk, and the employer must provide a private place for this activity.

Joint employment and employer responsibilities, including the joint employment relationships between Express, Modesto Staffing, and Royal Summit.

The findings of the investigation as it related to the complainant.

Mr. Moen and Ms. Gilbert-Weaver stated that they understood the FLSANM provisions, were aware of the regulations, and were in compliance.

Mr. Moen and Ms. Gilbert-Weaver stated that they understood that there was a joint employment relationship involving Express, Modesto Staffing, and Royal Summit.

Regarding (b) (7)(E) (b) (6), (b) (7)(C) was removed from (b) (6), (b) (7)(C) worksite due to (b) (6), (b) (7)(C) request to express milk, Ms. Gilbert-Weaver stated:

“We didn't realize (b) (6), (b) (7)(C) had a problem with being removed from Royal Summit. (b) (6), (b) (7)(C) came into the office and didn't mention anything. (b) (6), (b) (7)(C) is a good worker; that's why (b) (6), (b) (7)(C) still works for us and is currently at PSC. [...] I would like to point out that the issue was resolved in 38 minutes. (b) (6), (b) (7)(C) did not mention that (b) (6), (b) (7)(C) was a nursing mother. [...] (b) (6), (b) (7)(C) told me that (b) (6), (b) (7)(C) had asked (b) (6), (b) (7)(C) if (b) (6), (b) (7)(C) would like to go to another employer, and (b) (6), (b) (7)(C) agreed. [...] I did nothing wrong. I know what the laws are, and we are in compliance.”

Ms. Gilbert-Weaver additionally stated:

“(b) (6), (b) (7)(C) talked to (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) (an employee at Royal Summit) and advised Royal

Summit of the employee's rights and dangers of terminating (b) (6), (b) (7)(C) Royal Summit still said that they did not want (b) (6), (b) (7)(C) to return.”

Mr. Moen stated:

“I don't want to throw the client [Royal Summit] under the bus, but what they're saying could not be true. We wouldn't remove an employee from a worksite if the client wanted the employee to continue to work because we are paid for each employee at the site.”

WHI reiterated the joint employer responsibilities under the nursing mother provisions of the FLSA and requested the back wages and liquidated damages computed for (b) (6), (b) (7)(C). Mr. Moen and Ms. Gilbert-Weaver requested some time to discuss the amounts due. Mr. Moen then stated that they were agreeing to pay by 07/31/2015.

WHI provided Ms. Gilbert-Weaver with the WH-56 *Summary of Unpaid Wages, BW Disbursement and Pay Evidence Instructions*, WH-58 *Back Wage Receipt Form*, and *Compliance and Back Wage Payment Agreement*. Mr. Moen signed the WH-56 and *Compliance and Back Wage Payment Agreement* and explained the WH-58 to Ms. Gilbert-Weaver. Ms. Gilbert-Weaver signed the *Compliance and Back Wage Payment Agreement*.

WHI reiterated the instructions for the WH-58 and *BW Disbursement and Pay Evidence Instructions*. Fact sheets and publications were left with Ms. Gilbert-Weaver. Attempts were made to explain the fact sheets and publications.

The point-of-contact is Ms. Shannon Gilbert-Weaver, Owner, at (209) 522-1574.

(b) (6), (b) (7)(C) Notification:

(b) (6), (b) (7)(C) was notified of the results of the investigation on 07/13/2015 via telephone.

Publications:

The following publications were provided to Ms. Shannon Gilbert-Weaver on 07/10/2015 at the establishment: FLSA (WH 1318). Fact Sheets #13, 14, 17A, 21, 22, 23, 28, 28D, 43, 44, 73. Frequently Asked Questions – Break Time for Nursing Mothers (printed from www.dol.gov/whd).

HRG and Fact Sheets #28D, 44, 73, 77A were provided on 05/05/2015 to Ms. Gilbert-Weaver at the establishment.

Recommendation:

It is recommended that the case be closed with no further action (b) (7)(E).

(b) (6), (b) (7)(C)

Wage & Hour Investigator
07/17/2015

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1760012 Originating District: Sacramento District Office
Local Filing Number: 2015-302-06660 Investigating District: Sacramento District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 05/06/2015
Assignment Date: 05/06/2015

Employer Information

Trade Name: Royal Summit Legal Name: Royal Summit, Inc.
Address: 5253 Jerusalem Ct, Ste G EIN: 20-0188648
Modesto, CA95356 County: Stanislaus
NAICS Code: 339999
No. Of Employees: (b) (6)

Investigation Information

Period Investigated From: 04/23/2015 BNPI: 0
To: 05/08/2015 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

(b) (7)(E) FLSANM. COV: FLSA 203(s)(1)(A) & EEs hndlng goods trvng in intrste commrce. EX: N/A. SOC: FLSANM Retaliation - (b) (7)(E) removed from work @ 3rd party ER Royal Summit after asserting rights; due \$576 & equal amnt in LDs for 8 days of nonwork (b) (7)(E) \$1152. Joint ER Modesto Staffing dba Express ATP BWs & LDs. See Case ID #1759754. DISP: FC 07/17/15 @ estab w/ Owner Mr. Bret de St. Jeor & Ms. Michelle Lauzon. ATFC. Pubs: See narrative.

WHI Signature: _____ Date: 07/17/2015

Reviewed By: _____ Date: _____

Royal Summit, Inc.
dba Royal Summit
EIN: 20-0188648
5253 Jerusalem Ct., Suite G
Modesto, CA 95356
Mr. Bret de St. Jeor
(209) 521-2323

Case ID #1760012
Case File #2015-302-06660

Point of Contact:
Mr. Bret de St. Jeor
5253 Jerusalem Ct., Suite G
Modesto, CA 95356
(209) 521-2323

FLSA Nursing Mothers Narrative

Reason for Investigation: This limited investigation is a spin-off Case ID #1759754, which was initiated by (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) worked for temporary employment agency Express Employment Professionals and was placed at the client site, Royal Summit. (b) (6), (b) (7)(C) (b) (7)(E) requested time to express milk, and Royal Summit refused to allow (b) (6), (b) (7)(C) to do so. (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) contacted Express Employment Professionals, and Royal Summit allowed (b) (6), (b) (7)(C) to take a 15 minute break to express milk. (b) (6), (b) (7)(C) further stated that at the end of the day, Express Employment Professionals called and told (b) (6), (b) (7)(C) not to go back to work at Royal Summit.

(b) (7)(E) (b) (6), (b) (7)(C) was found to be owed \$576.00 in back wages and an equal amount in liquidated damages as a result of (b) (6), (b) (7)(C) termination from Royal Summit. Joint employer Modesto Staffing Consultants, Inc. dba Express Employment Professionals agreed to pay the amounts found due. *(See Exhibit A)*

COVERAGE:

Royal Summit, Inc. dba Royal Summit opened and incorporated in November 2002 under Mr. Bret de St. Jeor and his wife, Ms. Andrea de St. Jeor. *(See Exhibits C-1 through C-2 and C-4)* The business also operates as Groovy Cow Brands, LLC. *(See Exhibit C-1)* Mr. and Ms. de St. Jeor own (b) (4) and (b) (4), respectively. *(See Exhibits C-1 and C-4)* The business functions as a tin and bottle seller and also provides fulfillment and co-packing services to customers across the United States. *(See Exhibits C-1 and C-5)* Mr. de St. Jeor meets the definition of an employer under Section 203(d) of the FLSA because he oversees and employs permanent workers and jointly employs temporary staff. *(See Exhibits B-1 through B-2 and C-1)* For the period of investigation, Royal Summit had 6

permanent employees and approximately (b) (4) temporary employees through franchisee Modesto Staffing Consultants, Inc. dba Express Employment Professionals (hereinafter Modesto Staffing) and franchisor Express Employment Professionals (hereinafter Express). *(See Exhibits B-1 through B-2, C-1, and Case ID #1759754)* Royal Summit has not claimed an undue hardship as defined under Section 207(r) of the FLSA. *(See Exhibit C-1)*

The annual gross sales (ADV) for Royal Summit are as follows: 2014 - (b) (4) ; 2013 - (b) (4) ; 2012 - (b) (4) , and permanent and temporary employees directly affect the production of goods, such as tin boxes and Valentine's Day candy bouquets, that are shipped to various parties, (b) (4) throughout the United States. *(See Exhibits C-1, C-3, and C-5)* As such, the firm is enterprise covered under Section 203(s)(1)(A) of the Fair Labor Standards Act.

Period of Investigation: 04/23/2015 to 05/08/2015.

Prior History: This is the first investigation of Royal Summit by the Wage & Hour Division.

MODO: Sacramento District Office. The main office is located at 5253 Jerusalem Ct, Suite G, in Modesto, CA. There is also a warehouse located at 5160 Pentecost Dr., Suite H, in Modesto, CA. (b) (7)(E) *(See MODO ID #62070 and Exhibit D-4)*

Joint Employment:

Modesto Staffing & Royal Summit:

Modesto Staffing provides temporary employees to employer Royal Summit. An analysis of the factors set forth in 29 CFR 500.20(h)(5)(iv)(A) through (G) and 29 CFR 791 determined that a joint employment relationship **does** exist between Modesto Staffing and Royal Summit.

The following joint employment factors were met: **A through F**

Factor Met – The power to either alone or through control of the employer to direct, control or supervise the workers. Modesto Staffing recruits and supervises the temporary employees (“temps”). Once temps are placed at a client's worksite, the client also directs, controls, and supervises the temps. However, if a temp is unable to report to work at a client's site, the temp is required to contact Modesto Staffing via the 24-hour on-call phone line, and Modesto Staffing will inform the client. Temps placed at Royal Summit were directly controlled by a line supervisor (temp) who reported to and got instructions from Royal Summit employees and the Royal Summit owner. Royal Summit determines the start and stop times and locations of work for temps. *(See Exhibits B-1 and C-1)*

Factor Met – The power either alone or in addition to another employer, directly or indirectly, to hire or

fire, modify the employment conditions, or determine the pay rates or the methods of wage payment for workers. Royal Summit has the power to request that certain temps be removed from the jobsite and Modesto Staffing will do so. However, Royal Summit does not have a say in whether a temp continues to work at Modesto Staffing. Modesto Staffing has the power to terminate the temp and will take into consideration performance at Royal Summit and other clients' sites before doing so. When temps are at the Royal Summit jobsite, they report to a line supervisor (provided by Modesto Staffing) who reports to Royal Summit staff. The line supervisor works in an office provided by Royal Summit. Royal Summit and Modesto Staffing negotiate the pay rate, and method of payment is set by Modesto Staffing and Express. *(See Exhibits B-1 and C-1)*

Factor Met – The degree of permanency and duration of the relationship of the parties. Royal Summit has been a client of Modesto Staffing since 2012. There is no written contract. *(See Exhibits B-1 and C-1)*

Factor Met – The extent to which the services rendered by the workers are repetitive, rote tasks requiring skills which are acquired with relatively little training. Temps sent to work for Royal Summit are not required to have any experience. Training is provided by Royal Summit on the jobsite. *(See Exhibits B-1 and C-1)*

Factor Met – Whether the activities performed by the workers are an integral part of the overall business operation of the employer. Royal Summit provides fulfillment and co-packing services. Temps work on the production line, and their work is integral to the overall business operations of Royal Summit. *(See Exhibits B-1 and C-1)*

Factor Met – Whether the work is performed on Royal Summit's premises, rather than on premises owned or controlled by another business entity. Temps work at Royal Summit's warehouse on products that are sent out by Royal Summit. *(See Exhibits B-1 and C-1)*

Factor Not Met – Whether Royal Summit undertakes responsibilities in relation to the workers which are commonly performed by employers. Modesto Staffing (through Express) administers the FMLA and workers' compensation policies. Modesto Staffing (through Express) pays the temps. Temps fill out a Royal Summit timecard, per an agreement between Royal Summit and Modesto Staffing. Any required materials and tools are provided by Royal Summit. *(See Exhibits B-1 and C-1)*

EXEMPTIONS:

None claimed. (b) (6), (b) (7)(C) was an hourly, non-exempt employee that was jointly employed by Royal Summit and Modesto Staffing and is subject to Section 207 of the Act. (See Exhibits B-1, C-1, and D-2) (b) (6), (b) (7)(C) is therefore entitled to protection under the nursing mother provisions of Section 207(r).

STATUS OF COMPLIANCE:

(b) (6), (b) (7)(C) (b) (7)(E) (See Exhibit B-2) (b) (6), (b) (7)(C) is a nursing mother who needs to express milk for (b) (6), (b) (7)(C) child. It is less than 1 year after the child's birth. (See Exhibit B-2)

Section 207(r)(1)(A) & (B) – Reasonable Break Time & Place, Other than a Bathroom, Shielded from View and Free from Intrusion: No violation found.

Due to contradicting statements, (b) (7)(E) . A review of the events that occurred is as follows: (See Exhibits B-1 through B-2, C-1, and D-6)

(b) (6), (b) (7)(C) started working for Modesto Staffing (through Express) (b) (6), (b) (7)(C) stated that upon hire, (b) (6), (b) (7)(C) told someone (either the hiring agent (b) (6), (b) (7)(C) or Operations Manager (b) (6), (b) (7)(C)) at Modesto Staffing that (b) (6), (b) (7)(C) was a nursing mother.

Operations Manager (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) hired (b) (6), (b) (7)(C), and Modesto Staffing was not made aware that (b) (6), (b) (7)(C) was a nursing mother. Modesto Staffing further stated that, “[another client] PSC has a room for women who needed to pump. That's the only place we've sent women who needed to pump (when we knew about it).”

On Thursday, 04/23/2015, (b) (6), (b) (7)(C) was sent to work at Royal Summit. (b) (6), (b) (7)(C) worked 8 hours. (b) (6), (b) (7)(C) expressed milk in (b) (6), (b) (7)(C) car during the 11 AM to 11:30 AM lunch period. (b) (6), (b) (7)(C) stated (b) (6), (b) (7)(C) does this for other jobs as well, in order to avoid disruption of the business.

On Friday, 04/24/2015, (b) (6), (b) (7)(C) returned to work at Royal Summit. Royal Summit decided to provide lunch to all employees, so the lunch break was moved to between 11:45 AM to 12:00 PM. At approximately 10 AM, (b) (6), (b) (7)(C) told the line supervisor (Modesto Staffing employee through Express), (b) (6), (b) (7)(C), that (b) (6), (b) (7)(C) needed to express milk. (b) (6), (b) (7)(C) was initially denied (b) (6), (b) (7)(C) request.

- (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) was told not to leave the floor, unless (b) (6), (b) (7)(C) wanted to be terminated.
- Modesto Staffing stated that (b) (6), (b) (7)(C) was a “lead; (b) (6), (b) (7)(C) wasn't expected to know (b) (6), (b) (7)(C) needed to pump.”
- Royal Summit stated that (b) (6), (b) (7)(C) initially did not allow (b) (6), (b) (7)(C) to leave the floor because (b) (6), (b) (7)(C) did not realize (b) (6), (b) (7)(C) was a nursing mother. Royal Summit then stated that (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) was a nursing mother and said that (b) (6), (b) (7)(C) was “discriminating against her.” (b) (6), (b) (7)(C) told (b) (6), (b) (7)(C) would see what

(b) (6) could do.

(b) (6), (b) (7)(C) left the floor to talk to the available Royal Summit employee. (b) (6), (b) (7)(C) went to the restroom and contacted Modesto Staffing via text message. Modesto Staffing contacted Express for further guidance. Modesto Staffing then contacted (b) (6), (b) (7)(C) and explained the nursing mother provisions. (b) (6), (b) (7)(C) spoke to (b) (6), (b) (7)(C)

(b) (7)(E) (b) (6), (b) (7)(C) told (b) (6), (b) (7)(C) to return by 11 AM, which meant (b) (6), (b) (7)(C) had 15 minutes to express milk. Royal Summit stated that (b) (6), (b) (7)(C) asked (b) (6), (b) (7)(C) how long it normally took, and the (b) (6), (b) (7)(C) said that 15 minutes was sufficient.

(b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) typically expressed milk in (b) (6), (b) (7)(C) car during (b) (6), (b) (7)(C) lunch break. (b) (6), (b) (7)(C) did not offer (b) (6), (b) (7)(C) a place to express milk. Royal Summit stated that (b) (6), (b) (7)(C) asked if (b) (6), (b) (7)(C) needed a place to express milk and if (b) (6), (b) (7)(C) wanted to do so inside the office. Per Royal Summit, (b) (6), (b) (7)(C) told (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) “normally pumped in the car” and that (b) (6), (b) (7)(C) was fine with doing that.

Section 215(a)(3) – Retaliation Under the FLSA: Violation found.

Modesto Staffing was unable to substantiate their claim that (b) (6), (b) (7)(C) was removed from the worksite for performance and attitude issues. *(See Exhibits B-1 through B-2, C-1, and D-6)* Modesto Staffing, or its joint employer Royal Summit, retaliated against (b) (6), (b) (7)(C) for asserting (b) (6), (b) (7)(C) rights. (b) (6), (b) (7)(C) is due equitable relief in the form of payment of wages lost, as per Section 216(b).

A review of the events that occurred is as follows: *(See Exhibits B-1 and C-1)*

At the end of the day, (b) (6), (b) (7)(C) told all temporary employees to return the following Monday. Upon leaving work, (b) (6), (b) (7)(C) was contacted by Modesto Staffing.

- (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) asked if (b) (6), (b) (7)(C) should return to Royal Summit and Modesto Staffing said, “Why don't you wait until PSC [another client] comes back with work and not go into Royal Summit next week?”
- Modesto Staffing stated that Royal Summit did not want (b) (6), (b) (7)(C) to return due to performance and attitude issues. Modesto Staffing stated that they told (b) (6), (b) (7)(C) to wait for a new job that was coming up.
- Royal Summit stated that although (b) (6), (b) (7)(C) had some performance issues, they were expecting (b) (6), (b) (7)(C) back the next week. (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) normally gives temporary employees a week before judging their performance and deciding whether they should be removed from the jobsite. Royal Summit Owner Mr. Bret de St. Jeor stated that Modesto Staffing called him and “said that (b) (6), (b) (7)(C) was scheduled to go back to another employer and asked if it would be ok if they pulled (b) (6), (b) (7)(C)

Neither Modesto Staffing nor Royal Summit had evidence to support the claim of performance or attitude issues. No substitute temporary employee was sent to Royal Summit.

(b) (7)(E)

(b) (6), (b) (7)(C) is owed 8 days of lost wages (b) (7)(E) \$576.00

Note: Although (b) (6), (b) (7)(C) did not work overtime in any workweek, per Section 216(b) of the Act, she is due equitable relief in the form of payment of wages lost. (b) (7)(E)

Section 215(a)(3) Back Wages: \$576.00
FLSA Liquidated Damages: \$576.00

DISPOSITION:

On 07/17/2015, a final conference was held at the Modesto, CA establishment. Present during the conference were Production Manager Ms. Michelle Lauzon and Owner Mr. Bret de St. Jeor (via telephone). Final conference notes were taken. *(See Exhibit D-5)*

WHI (b) (6), (b) (7)(C) discussed the following:

FLSA provisions, including minimum wage, overtime, recordkeeping, child labor, and coverage.

FLSA Nursing Mother provisions, including a discussion of the following statement and related exemptions:

Covered employers must provide reasonable break time for an employee to express breast milk for her nursing child for 1 year after birth each time there is a need to express milk, and the employer must provide a private place for this activity.

Joint employment and employer responsibilities, including the joint employment relationships between Modesto Staffing (dba Express) and Royal Summit.

The findings of the investigation as it related to the complainant.

Mr. de St. Jeor and Ms. Lauzon stated that they understood the FLSANM provisions and the joint employment

relationship involving Express and Royal Summit.

Regarding the provision of a private place for a nursing mother to express milk, Ms. Lauzon stated:

“When someone tells us they need an accommodation, we have an available room where we can quickly make the accommodation. It has a closing door. We will make that accommodation when that need arrives again.”

Regarding (b) (7)(E) (b) (6), (b) (7)(C) was removed from (b) (6), (b) (7)(C) worksite due to (b) (6), (b) (7)(C) request to express milk, Mr. de St. Jeor stated:

“We weren't aware there was a nursing mother. From now on, I will tell employment agencies that they need to tell us if there are nursing mothers. I can't go around asking women if they're pregnant or breastfeeding. I would get sued.”

Ms. Lauzon then stated:

(b) (6), (b) (7)(C) is the supervisor, and if (b) (6), (b) (7)(C) is approached by a nursing mother, (b) (6), (b) (7)(C) is well aware of the regulations now.”

After agreeing to future compliance, Mr. de St. Jeor was advised that joint employer Modesto Staffing (dba Express) had agreed to pay the back wages and liquidated damages.

The point-of-contact is Mr. Bret de St. Jeor, Owner, at (209) 521-2323.

Publications:

The following publications were provided to Mr. Bret de St. Jeor on 07/17/2015 at the establishment: FLSA (WH 1318). FLSA & FMLA Poster. Fact Sheets #13, 14, 17A, 21, 22, 23, 28, 28D, 43, 44, 73, 77A. Frequently Asked Questions – Break Time for Nursing Mothers (printed from www.dol.gov/whd).

HRG and Fact Sheets #28D, 44, 73, 77A were provided on 05/08/2015 to Mr. James Anderson, Ms. Michelle Lauzon, and Mr. Isaac Mendez at the establishment.

Recommendation:

It is recommended that the case be closed with no further action (b) (7)(E)

Royal Summit Case ID: 1760012

(b) (6), (b) (7)(C)

Wage & Hour Investigator
07/17/2015

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1766287 Originating District: Las Vegas District Office
Local Filing Number: 2015-280-01626 Investigating District: Las Vegas District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 07/17/2015
Assignment Date: 07/20/2015

Employer Information

Trade Name: Walmart Super Center

Legal Name: Walmart Stores, Inc.

Address: 3200 Market St

EIN: 71-0415188

County: Carson City

NAICS Code: 452112

Carson City, NV89706

No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 06/22/2015

BNPI:

To: 09/21/2015

Reinvestigation: ☐

Investigation Type: (b) (7)(E)

Recurring Violation: ☐

Investigation Tool: Full Investigation

Future Compliance Agreed: ☐

Compliance Status: Agree to Comply

Involved in AG: ☐

Recommended Action:

BWFS: ☐

RO/NO Review: ☐

CMP: ☐

Follow Up Investigation: ☐

Litigation: ☐

Other Action: ☐

Civil Action: ☐

Denial of Future Certificate: ☐

Criminal Action: ☐

BW Payment Deadline: 08/05/2016

Submit For Opinion: ☐

Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	1	1	\$216.58	\$216.58	\$0.00	\$0.00	

Total Violations Under FLSNM: 3 \$0.00

WHISARD Compliance Action Report

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	1	Unduplicated Employees Agreed:	1
Total Amount BWs Computed:	\$216.58	Total Amount BWs Agreed:	\$216.58
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

46 hrs. FLSNM, Ent coverage. ADV> \$500K, ER has over (b) (4) EE's. (b) (7)(E) is not exempt under Sect 7, (b) (7)(E) is covered under sect 7(r). Nursing mothers (b) (7)(E) had baby under 1 year & was not provided with a functional space that (b) (6) could use to express milk. ER delayed installing electrical outlet for pump. (b) (6) supply diminished. (b) (7)(E) was forced to clock out while other nursing mother was paid for the time. Section 215(a)(3) violation found for unpaid breaks in the amount of \$216.58. ER ATC/ATP.

WHI Signature: _____ Date: 08/05/2016

Reviewed By: _____ Date: _____

Case I.D # 1766287
Walmart Super Center
3200 Market Street
Carson City, NV 89706
TAX I.D. # 71-0415188
Phone: 775-883-6415

FLSA NURSING MOTHERS NARRATIVE

COVERAGE:

Subject firm is an American multinational retail corporation that operates and manages a chain of over 11,500 discount department stores and warehouse stores in 28 countries. Walmart was founded on July 2nd, 1962 by Sam Walton and Walmart Stores, Inc. was incorporated on October 31st, 1969 in Arkansas. Walmart currently employs (b) (4) employees worldwide and (b) (4) in the United States alone.

Walmart Store associates or employees process credit card payments on a daily basis and answer phone calls from out of state. Employees also regularly handle items that have moved through interstate commerce such as electronics from Sony, Cannon, and Nikon which are all headquartered in Tokyo, Japan, Baby Einstein which is headquartered in Burbank, California and Faded Glory clothing which is headquartered in New York, New York among hundreds of other items that have traveled through interstate commerce. (See Exhibits C-1 – C-7-h)

Section 3(d) Employer: During the investigation it was determined that (b) (6), (b) (7)(C) is an employer that meets the definition of Section 3(d). (b) (6), (b) (7)(C) is involved in the daily operations of the business. (b) (6), (b) (7)(C) has hired and fired employees, directs the work of the entire store in Carson City, NV, has incorporated policy and procedures for the company store, completes all the financial aspects of the

company and administers pay and payroll and has otherwise acted in the direct interest of the corporate entity in relation to the employees and the store.

According to the employer, the subject firm's annual dollar volume has exceeded (b) (4) for the past three years (each year). Since the dollar volume annually exceeds \$500,000, the employer has at least two or more full time employees and the employees have handled goods that have traveled through interstate commerce, coverage is asserted under section 3(s)(1)(A)(i)&(ii) and therefore, all employees are covered in all weeks. (See Exhibits C-1 – C-7)

Period of Investigation: From 09/23/2012 to 09/21/2015

EXEMPTIONS:

The overtime exemptions were tested to determine whether (b) (6), (b) (7)(C) is exempt from Break Time for Nursing Mothers under Section 7 of the Fair Labor Standards Act. Based on the interview statement and payroll records, (b) (6), (b) (7)(C) is a cashier and does not perform any management duties or any duties that would classify (b) (6), (b) (7)(C) as exempt under 29 CFR Part 541 or FLSA Sections 13(a) or 13(b) provisions. Furthermore, (b) (6), (b) (7)(C) confirmed that the company classifies its cashiers as non-exempt employees; therefore, (b) (6), (b) (7)(C) is subject to Section 207 of the Act and is not exempt from Break Time for Nursing Mothers under Section 7(r) of the Fair Labor Standards Act. (See Exhibits B-1-a – B-1-b, C-1 – C-7, D-4-a –D-4-bj)

STATUS OF COMPLIANCE:

Reason for Break Time for Nursing Mothers Investigation: This investigation was initiated (b) (7)(E) (b) (6), (b) (7)(C) (b) (7)(E) was not provided with a functional space that (b) (6), (b) (7)(C) could use to express

breast milk and was told to use any available fitting room. The fitting rooms did not have an electrical outlet for (b) (6), (b) (7)(C) to plug (b) (6), (b) (7)(C) electric pump. (b) (6), (b) (7)(C) was told that (b) (6), (b) (7)(C) could use the training room and break room which were not shielded from view and free of intrusion and was constantly interrupted with managers and associates coming in while (b) (6), (b) (7)(C) was actively pumping or expressing milk. (b) (6), (b) (7)(C) was also told that (b) (6), (b) (7)(C) could use the room next to the server electrical room that had no reasonable expectation of privacy since there were cameras, was a health hazard since there was exposure to high voltage and there was also no expectation of cleanliness since the room was full of dirt and dust given that it was next to the server electrical room. Furthermore, (b) (6), (b) (7)(C) was not provided the ability to safely store the milk for (b) (6), (b) (7)(C) child. The employer did not ensure that there was a place where (b) (6), (b) (7)(C) could store the milk while (b) (6), (b) (7)(C) was at work. (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) expressed milk had gone missing or was stolen from the employees' break room refrigerator. (b) (6), (b) (7)(C) stated that the employer had several mini refrigerators around the store that were not in use and that had locks but (b) (6), (b) (7)(C) was not allowed to use those refrigerators to store (b) (6), (b) (7)(C) expressed milk to avoid the milk from getting stolen or coming up missing. In addition, (b) (6), (b) (7)(C) also stated that (b) (6), (b) (7)(C) was told by management that (b) (6), (b) (7)(C) was taking too much time on (b) (6), (b) (7)(C) breaks to express milk and the length of time was questioned. (b) (7)(E) and Exhibit B-1-a – B-2, E-6-a – E-6-h)

Prior History: There is no history for this company regarding Break Time for Nursing Mothers Section 7(r) under the Fair Labor Standards Act.

MODO: Little Rock District Office is the MODO. Contact was made in WHISARD with the MODO. (b) (7)(E)
(See Exhibits D-1-a – D-1-d)

Section 207(r)(1)(A) &(B): Break Time for Nursing Mothers: Violation was found because the employer did not provide a functional space shielded from view and intrusion for nursing mothers to express milk and also by not providing a reasonable amount of break time for the employee by questioning the time that (b) (6), (b) (7)(C) took to express milk for (b) (6), (b) (7)(C) nursing child under Section 7(r) of the FLSA.

On 07/24/2015 this WHI contacted (b) (6), (b) (7)(C), store manager for the Carson City, NV store and informed (b) (6), (b) (7)(C) of the investigation and the requirements under Break Time for Nursing Mothers under the Fair Labor Standards Act. (b) (6), (b) (7)(C) agreed to comply but stated that (b) (6), (b) (7)(C) was taking an excessive amount of time on (b) (6), (b) (7)(C) breaks to pump. (b) (6), (b) (7)(C) wanted to know how much time was considered enough time for an employee to express milk. This WHI referred (b) (6), (b) (7)(C) to Federal Register Volume 75, No. 244 Reasonable Break Time for Nursing Mothers and explained to (b) (6), (b) (7)(C) that there was no set time that was considered a sufficient amount of time and that it varied from woman to woman. It was further explained that all applicable factors needed to be considered. This WHI referenced part "b. Reasonable Break Time" and explained factors to be considered.

This WHI also advised (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) needed to be provided a functional and separate space in which (b) (6), (b) (7)(C) could express milk that is shielded from view and free of intrusion. It was stated that (b) (6), (b) (7)(C) had been expressing and pumping milk in the training room and had been walked in on excessively by management (both male and female) and walked in on by associates while (b) (6), (b) (7)(C) was actively pumping milk. It was stated that (b) (6), (b) (7)(C) had been walked in on and had groups of employees stand around having meetings or conversations while (b) (6), (b) (7)(C) was pumping and exposed. It was further stated that (b) (6), (b) (7)(C) was then instructed to use the room next to the electrical server room which has high voltage and danger signs, had cameras and was filthy. It was stated that in both of these situations (expressing milk in the training room and the room next to the electrical server) (b) (6), (b) (7)(C) was not in a separate space that was shielded from view and free from intrusion. It was further stated that the room next to the server room was considered a health hazard and not appropriate to express milk that would then be given to an infant baby.

(b) (6), (b) (7)(C) responded by stating that (b) (6), (b) (7)(C) was never instructed to use the training room nor the room next to the electrical server room and that (b) (6), (b) (7)(C) had taken it upon (b) (6), (b) (7)(C) to pump and express milk there. What (b) (6), (b) (7)(C) stated directly contradicted the proof of text messages that (b) (6), (b) (7)(C) provided this WHI. The text messages show that (b) (6), (b) (7)(C) (manager) had allowed (b) (6), (b) (7)(C) to use the training room/personnel room and that (b) (6), (b) (7)(C) (assistant manager) had told (b) (6), (b) (7)(C) that they could use the room next to the electrical server to pump and express milk. The text messages also show that (b) (6), (b) (7)(C) had prohibited (b) (6), (b) (7)(C) from using an extension cord in the fitting rooms to connect (b) (6), (b) (7)(C) electric pump and express milk because it was a tripping hazard. (See Exhibits E-6-a – E-6-h)

On 08/03/2015 this WHI received Walmart's Break Time for Nursing Mothers Policy. This WHI then called (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) explained that (b) (6), (b) (7)(C) had purchased a manual pump for (b) (6), (b) (7)(C) further stated that (b) (6), (b) (7)(C) had talked to (b) (6), (b) (7)(C) and that everything had been resolved. This WHI explained again the requirements to allow reasonable break times to express milk. (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) understood and that they were allowing (b) (6), (b) (7)(C) to take the time that (b) (6), (b) (7)(C) needed to express milk.

On the same day (08/03/2015), after talking to (b) (6), (b) (7)(C), this WHI called (b) (6), (b) (7)(C) to verify that the issue had been resolved. (b) (6), (b) (7)(C) stated that their solution was to buy (b) (6), (b) (7)(C) a manual pump and that (b) (6), (b) (7)(C) was unable to express milk with the manual pump because (b) (6), (b) (7)(C) body was already used to the electric pump. (b) (6), (b) (7)(C) further stated that they started requiring (b) (6), (b) (7)(C) to clock out on (b) (6), (b) (7)(C) breaks when (b) (6), (b) (7)(C) needed to express milk but that there was another nursing mother (b) (6), (b) (7)(C) that took breaks to pump and (b) (6), (b) (7)(C) was not required to clock out and was still being paid for (b) (6), (b) (7)(C) break time.

On 08/05/2015, this WHI called (b) (6), (b) (7)(C) again and advised that under the regulations (b) (6), (b) (7)(C) needed to provide a functional space that an employee could use to express breast milk. It was explained that at a minimum, a space must contain a place for the nursing mother to sit, and a flat surface, other than the floor, on which to place the pump. It was explained that the space should have access to electricity so that the nursing mother can plug in (b) (6), (b) (7)(C) electric pump. (b) (6), (b) (7)(C) agreed to install an electrical outlet in the fitting room so that it would be functional and (b) (6), (b) (7)(C) would be able to plug in (b) (6), (b) (7)(C) pump and express milk. (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) was off for several days and that (b) (6), (b) (7)(C) would have the outlet installed before (b) (6), (b) (7)(C) had to return to work again. (b) (6), (b) (7)(C) also stated that (b) (6), (b) (7)(C) would send the work order to this WHI as proof of installation.

This WHI called (b) (6), (b) (7)(C) on 08/12/2015, 08/14/2015, and 08/18/2015 and every time, (b) (6), (b) (7)(C) was not available and this WHI would leave a message with an associate at the store to return the call. On 08/18/2015, this WHI also called (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) advised that no outlet had ever been installed.

On 09/03/2015, this WHI requested time records for all nursing mothers that were taking break time to express milk for the investigative period. On 09/14/2015, this WHI received time records for all nursing mothers that were taking break time to express milk. According to the employer, there were only two

employees during the investigative period that were taking breaks to express milk and they were (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C). The employer explained that it was believed that (b) (6), (b) (7)(C) was pumping or expressing milk before and after (b) (6), (b) (7)(C) shift and during her 30 minute lunch and that is why (b) (6), (b) (7)(C) was not required to clock out and why (b) (6), (b) (7)(C) was required to clock out. The employer further explained that they would reimburse (b) (6), (b) (7)(C) for the paid 15 minute break that they had been deducting but that anything after the 15 minute break would not be compensated nor reimbursed. It was further stated that they had approved (b) (6), (b) (7)(C) request to run an electrical line and outlet to a designated nursing area that will enable (b) (6), (b) (7)(C) to plug in (b) (6), (b) (7)(C) electric breast pump.

The same day (09/14/2015), this WHI called (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) advised that (b) (6), (b) (7)(C) was not allowed to run an electrical line and that no electric outlet had been installed and that (b) (6), (b) (7)(C) had been unable to pump. (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) milk supply had diminished drastically and (b) (6), (b) (7)(C) baby didn't have enough milk to drink. (b) (6), (b) (7)(C) further stated that (b) (6), (b) (7)(C) had coworkers buy (b) (6), (b) (7)(C) formula because they felt bad for (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) baby so that (b) (6), (b) (7)(C) baby would have milk to drink. This WHI also talked to another coworker named (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) corroborated the description of events.

On 09/21/2015, WHI (b) (6), (b) (7)(C) and this WHI investigator traveled to Carson City, NV to take a tour of the establishment and to verify whether or not an electric outlet had been installed. It was confirmed that an electric outlet had been installed that very morning on 09/21/2015. The manager at the time named (b) (6), (b) (7)(C) confirmed that the electrical outlet had been installed that morning as well as (b) (6), (b) (7)(C) and another associate confirming the same thing. Pictures were taken of the fitting room and electrical outlet designated for nursing mothers.

Even though the electrical outlet was installed on 09/21/2015, it took the employer almost nine weeks to install an electrical outlet or provide a functional space to allow nursing mothers a functional space to express milk. By this time it was too late for (b) (6), (b) (7)(C) milk supply diminished completely and (b) (6), (b) (7)(C) was forced to feed (b) (6), (b) (7)(C) baby formula. (b) (6), (b) (7)(C) supply dropped so drastically that when (b) (6), (b) (7)(C) was home, (b) (6), (b) (7)(C) baby refused to nurse because (b) (6), (b) (7)(C) body could not produce enough milk to feed (b) (6), (b) (7)(C) baby and (b) (6), (b) (7)(C) baby started to prefer the bottle with formula. (b) (6), (b) (7)(C) now is unable to pump and express milk and (b) (6), (b) (7)(C) baby is now drinking solely formula.

(b) (6), (b) (7)(C) was also being provided with an electric pump by (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C). When (b) (6), (b) (7)(C) milk supply started to dwindle, (b) (6), (b) (7)(C) had requested that (b) (6), (b) (7)(C) provide (b) (6), (b) (7)(C) with formula because (b) (6), (b) (7)(C) was unable to feed (b) (6), (b) (7)(C) baby. (b) (6), (b) (7)(C) told (b) (6), (b) (7)(C) that in order to get formula (b) (6), (b) (7)(C) would have to return the electric pump that they had provided (b) (6), (b) (7)(C) because they could not provide both the electric pump and the formula. Coworkers of (b) (6), (b) (7)(C) felt bad for (b) (6), (b) (7)(C) and had witnessed (b) (6), (b) (7)(C) crying because (b) (6), (b) (7)(C) could not feed (b) (6), (b) (7)(C) baby and they had bought (b) (6), (b) (7)(C) formula so that (b) (6), (b) (7)(C) could feed (b) (6), (b) (7)(C) baby. Eventually (b) (6), (b) (7)(C) was forced to return the electric pump in order to receive formula for (b) (6), (b) (7)(C) baby.

(b) (6), (b) (7)(C) baby also was sensitive to formula and required a sensitive formula which (b) (6), (b) (7)(C) did not provide unless (b) (6), (b) (7)(C) provided a doctor's note from (b) (6), (b) (7)(C) baby's pediatrician stating that (b) (6), (b) (7)(C) baby needed sensitive formula. So for about six weeks, (b) (6), (b) (7)(C) had to pay out of pocket for formula until (b) (6), (b) (7)(C) was able to take (b) (6), (b) (7)(C) baby to the pediatrician and get a doctor's note from the pediatrician to provide to (b) (6), (b) (7)(C).

After (b) (6), (b) (7)(C) was able to get the doctor's note from (b) (6), (b) (7)(C) baby's pediatrician stating that (b) (6), (b) (7)(C) baby needed sensitive formula, (b) (6), (b) (7)(C) started to provide (b) (6), (b) (7)(C) the means to purchase sensitive formula. When (b) (6), (b) (7)(C) started to give (b) (6), (b) (7)(C) baby the specific brand sensitive formula that (b) (6), (b) (7)(C) would approve (b) (6), (b) (7)(C) baby could not properly digest that particular brand of sensitive formula and was getting sick. The only formula that (b) (6), (b) (7)(C) baby can digest is Infamil Gentlease. (b) (6), (b) (7)(C) does not cover this particular brand formula so (b) (6), (b) (7)(C) has been forced to pay out of pocket for this formula because this is the only formula that (b) (6), (b) (7)(C) baby can digest.

Section 215(a)(3) – Retaliation Under the FLSA: Violation found.

After (b) (6), (b) (7)(C) (b) (7)(E), the employer told (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) had to start clocking out for (b) (6), (b) (7)(C) breaks to pump or express milk. (b) (6), (b) (7)(C) was the only nursing mother that had to clock out and not get paid for the break time (b) (6), (b) (7)(C) used in order to pump and express milk. There was another nursing mother (b) (6), (b) (7)(C) that did not have to clock out. (b) (6), (b) (7)(C) was not compensated for the time (b) (6), (b) (7)(C) took to express and pump milk while the other nursing mother was being compensated. Furthermore, prior to (b) (6), (b) (7)(C) (b) (7)(E) (b) (6), (b) (7)(C) was not clocking out for (b) (6), (b) (7)(C) breaks to express milk and was not told that (b) (6), (b) (7)(C) had to clock out.

Also, prior to (b) (6), (b) (7)(C) (b) (7)(E), (b) (6), (b) (7)(C) was always scheduled a 30 minute lunch break. (b) (6), (b) (7)(C) had recently had knee surgery and needed (b) (6), (b) (7)(C) 30 minute lunch breaks to rest (b) (6), (b) (7)(C) knee because (b) (6), (b) (7)(C) worked as a cashier standing up the entire shift. After (b) (7)(E) and the employer was contacted by this WHI (b) (6), (b) (7)(C) stopped being scheduled (b) (6), (b) (7)(C) 30 minute lunch breaks and was forced to work (b) (6), (b) (7)(C) entire shift without a lunch break. (b) (6), (b) (7)(C) was told by management that this happened to (b) (6), (b) (7)(C) because (b) (7)(E). Another employee that was interviewed corroborated (b) (6), (b) (7)(C) story and affirmed that management stopped scheduling lunch breaks for (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) was forced to work (b) (6), (b) (7)(C) entire shift without a break standing up on (b) (6), (b) (7)(C) injured knee. (See Exhibits B-1-a – B-2)

The employer took nine weeks to install an electrical outlet. They told (b) (6), (b) (7)(C) that installing an electrical outlet would inconvenience them and told (b) (6), (b) (7)(C) could not use (b) (6), (b) (7)(C) electrical pump anymore. Furthermore, the employer stopped scheduling (b) (6), (b) (7)(C) 30 minute breaks as stated above and the employer decreased (b) (6), (b) (7)(C) breaks by only scheduling (b) (6), (b) (7)(C) one 15-minute break. Due to the amount of backlash (b) (6), (b) (7)(C) received for trying to pump milk for (b) (6), (b) (7)(C) baby and due to the exorbitant amount of time that the employer took to install an electrical outlet, (b) (6), (b) (7)(C) milk supply diminished drastically and eventually (b) (6), (b) (7)(C) was no longer able to produce milk because of the extremely stressful situation (b) (6), (b) (7)(C) was in and also because (b) (6), (b) (7)(C) was not able to pump with required frequency in order to keep (b) (6), (b) (7)(C) supply up.

According to Section 216(b) it states, “Any employer who violates the provisions of section 215(a)(3) of this title shall be liable for such legal or equitable relief as may be appropriate to effectuate the purposes of section 215(a)(3) of this title...”

The purpose of section 207(r) is to allow a nursing mother “a reasonable break time to express breast milk for her nursing child for 1 year after the child's birth each time such employee has need to express the milk...”

Legal or equitable relief in regards to Section 207(r) is for the mother to be able to provide enough breast milk to feed her child. Since (b) (6), (b) (7)(C) is no longer able to produce breast milk to feed (b) (6), (b) (7)(C) child, the closest “equitable relief” would be to provide breast milk to feed (b) (6), (b) (7)(C) child by purchasing breast milk so

that (b) (6), (b) (7)(C) is able to feed (b) (6), (b) (7)(C) child. Furthermore, if (b) (6), (b) (7)(C) had been allotted reasonable break time and a functional space to express milk, (b) (6), (b) (7)(C) would not have had to buy formula for (b) (6), (b) (7)(C) child. Therefore, “equitable relief” granted to effectuate the purposes of section 215(a)(3) would also encompass compensating (b) (6), (b) (7)(C) for all the monies spent on formula for (b) (6), (b) (7)(C) child because had (b) (6), (b) (7)(C) been able to pump and express milk for (b) (6), (b) (7)(C) child, (b) (6), (b) (7)(C) would not have had to purchase formula to begin with.

(b) (6), (b) (7)(C) is also due equitable relief in the form of payment of wages lost for the times in which (b) (6), (b) (7)(C) had to clock out to pump and express milk. Although (b) (6), (b) (7)(C) did not do any work during the time that (b) (6), (b) (7)(C) clocked out to express milk, the employer was allowing another nursing mother to take breaks in order to express milk and was not requiring the other nursing mother to clock out. Hence, equitable relief would be to compensate (b) (6), (b) (7)(C) for the break time (b) (6), (b) (7)(C) was not paid while (b) (6), (b) (7)(C) expressed milk.

Because (b) (6), (b) (7)(C) was not producing milk to feed (b) (6), (b) (7)(C) child, (b) (6), (b) (7)(C) was forced to turn in (b) (6), (b) (7)(C) electric breast pump so that WIC would provide (b) (6), (b) (7)(C) the means to purchase formula to feed (b) (6), (b) (7)(C) baby. Again, if (b) (6), (b) (7)(C) had been allotted reasonable break time and a functional space to express milk, (b) (6), (b) (7)(C) would not have had to buy formula for (b) (6), (b) (7)(C) child and therefore not had to turn in (b) (6), (b) (7)(C) electric breast pump. Equitable relief for this particular aspect of the situation would be to provide (b) (6), (b) (7)(C) with an electric breast pump so that (b) (6), (b) (7)(C) can have the opportunity to express milk for (b) (6), (b) (7)(C) child.

Calculations per 15(a)(3)

Regarding 15 minute breaks deducted:

The employer agreed to reimburse (b) (6), (b) (7)(C) for the 15-minute breaks not paid to (b) (6), (b) (7)(C) plus any overtime. The breakdown goes as follows:

(b) (7)(E) [REDACTED]

(b) (7)(E)

Total back wages for unpaid 15-minute breaks = \$216.58

DISPOSITION:

On 08/05/2016, a final conference was held over the phone and present during the conference were Sam Roberts, Assistant General Counsel, and this WHI. This WHI discussed FLSA provisions including minimum wage, overtime, child labor and record keeping in detail.

This WHI discussed in great detail the FLSA Nursing Mother provision. This WHI stated to Mr. Roberts that a covered employer must provide reasonable break time for an employee to express milk for (b) (6), (b) (7)(C) nursing child for one year after birth each time there is a need to express milk, and the employer must provide a private place for this activity. This WHI investigator discussed the series of events that occurred throughout the case.

It was advised that the store manager, (b) (6), (b) (7)(C), complained about the excessive amount of time that (b) (6), (b) (7)(C) was taking on (b) (6), (b) (7)(C) breaks to pump. This WHI told Mr. Roberts that this WHI referred (b) (6), (b) (7)(C) to Federal Register Volume 75, No. 244 Reasonable Break Time for Nursing Mothers and

explained to (b) (6), (b) (7)(C) that there was no set time that was considered a sufficient amount of time and that it varied from woman to woman. It was further explained that all applicable factors needed to be considered. This WHI referenced part “b. Reasonable Break Time” and explained factors to be considered.

This WHI also advised Mr. Roberts that this WHI had a conversation with (b) (6), (b) (7)(C) in which it was stated that (b) (6), (b) (7)(C) needed to be provided a functional and separate space in which (b) (6), (b) (7)(C) could express milk that is shielded from view and free of intrusion. It was stated that (b) (6), (b) (7)(C) had been expressing and pumping milk in the training room and had been walked in on excessively by management (both male and female) and walked in on by associates while (b) (6), (b) (7)(C) was actively pumping milk. It was stated that (b) (6), (b) (7)(C) had been walked in on and had groups of employees stand around having meetings or conversations while (b) (6), (b) (7)(C) was pumping and exposed. It was further stated that (b) (6), (b) (7)(C) was then instructed to use the room next to the electrical server room which has high voltage and danger signs, had cameras and was filthy. It was stated that in both of these situations (expressing milk in the training room and the room next to the electrical server) (b) (6), (b) (7)(C) was not in a separate space that was shielded from view and free from intrusion. It was further stated that the room next to the server room was considered a health hazard and not appropriate to express milk that would then be given to an infant baby.

It was further advised that (b) (6), (b) (7)(C) responded by stating that (b) (6), (b) (7)(C) was never instructed to use the training room nor the room next to the electrical server room and that (b) (6), (b) (7)(C) had taken it upon (b) (6), (b) (7)(C) to pump and express milk there. This WHI advised Mr. Roberts that what (b) (6), (b) (7)(C) stated directly contradicted the proof of text messages that (b) (6), (b) (7)(C) provided this WHI. The text messages showed that (b) (6), (b) (7)(C) (manager) had allowed (b) (6), (b) (7)(C) to use the training room/ personnel room and that (b) (6), (b) (7)(C) (assistant manager) had told (b) (6), (b) (7)(C) that they could use the room next to the electrical server to pump and express milk. The text messages also show that (b) (6), (b) (7)(C) had prohibited (b) (6), (b) (7)(C) from using an extension cord in the fitting rooms to connect (b) (6), (b) (7)(C) electric pump and express milk because it was a tripping hazard.

This WHI then advised Mr. Roberts that (b) (6), (b) (7)(C) had purchased a manual pump for (b) (6), (b) (7)(C) to use. This WHI further stated that (b) (6), (b) (7)(C) was unable to express milk with the manual pump because (b) (6), (b) (7)(C) body was already used to the electric pump and in addition to that (b) (6), (b) (7)(C) was being required to clock out on (b) (6), (b) (7)(C) breaks to express milk but that there was another nursing mother that

took breaks to pump and was not required to clock out. Therefore, the other nursing mother was being paid for (b) (6), (b) (7)(C) break time.

Mr. Roberts stated that their policy was clear and that employees could take the time needed to pump milk and that anything over the allotted break time would be unpaid. He also stated that (b) (6), (b) (7)(C) had gone “above and beyond” by purchasing a manual pump for (b) (6), (b) (7)(C). Mr. Roberts stated that employees were not supposed to be clocking out and that they were only supposed to fill out a time adjustment sheet for the additional time that was taken on their breaks past the 15 paid minutes. He further stated that the other nursing mother, because of (b) (6), (b) (7)(C) schedule, did not pump as often and that (b) (6), (b) (7)(C) pumped during (b) (6), (b) (7)(C) lunch breaks and 15 minute breaks.

This WHI advised Mr. Roberts that according to Federal Register Volume 75, No. 244, it explained that expressing breast milk alone typically takes about 15 to 20 minutes and that there are other factors in determining break time such as the location of the space and amenities nearby, proximity of employee's work area, availability of a sink for washing, location of a refrigerator or personal storage for the milk, etc. This WHI stated that given these factors and that the other nursing mother was manually pumping, that it was difficult to believe that the other nursing mother only took the 15 minute breaks and did not go over that time.

This topic was a difficult topic to prove given that there was no concrete information regarding the details of when the other nursing mother took breaks to pump. This WHI advised Mr. Roberts that the information provided regarding the time that it takes for nursing mothers to pump is to give him an idea of a realistic amount of time that could be taken by a pumping mother. It was further stated that the managers at that location were not informed and did not appear to have concrete knowledge of the break time for nursing mothers provision.

This WHI advised that the ER cannot dictate what type of pump an employee should use. It was reiterated that the ER has to provide a functional space free from intrusion in order for the nursing mother to express milk. It was explained that not having an electric outlet hence did not qualify the fitting room as a functional space for the nursing mother to express milk.

Mr. Roberts also inquired about who instructed (b) (6), (b) (7)(C) to clock out so that he could take

appropriate action in regards to the particular manager.

This WHI also discussed the lack of timeliness that the store manager displayed in having the electrical outlet installed. It was stated that it took nearly seven weeks to have the electrical outlet installed and because of this exorbitant amount of time, (b) (6), (b) (7)(C) milk supply diminished completely. Because of this, (b) (6), (b) (7)(C) was forced to feed (b) (6), (b) (7)(C) baby with formula. It was further stated that this caused a financial hardship on (b) (6), (b) (7)(C) and that (b) (6), (b) (7)(C) baby had trouble digesting the milk and had to be switched to a more expensive sensitive formula.

This WHI further explained that (b) (6), (b) (7)(C) had to give up (b) (6), (b) (7)(C) electric pump in order to be provided formula from (b) (6), (b) (7)(C). It was explained that these series of events led to permanent damage to (b) (6), (b) (7)(C) as well as (b) (6), (b) (7)(C) baby.

Mr. Roberts stated that he assumed that (b) (6), (b) (7)(C) put in the work order to have an electrical outlet installed and that it must have taken that long to have it installed. He further stated that since (b) (6), (b) (7)(C) was not an electrician, (b) (6), (b) (7)(C) had no control over the timeliness of the install of the electrical outlet.

This WHI asked Mr. Roberts to produce proof of the time and date that the work order was submitted and the request was made to have an electrical outlet installed into the designated fitting room that was converted into the room exclusively for nursing mothers.

Mr. Roberts stated that he would look into getting that information to fully verify that the work order was requested in a timely manner.

Mr. Roberts was provided with additional publications. CMPs were addressed with Mr. Roberts and he was advised that CMPs may be assessed for repeated, willful, or child labor violations. He stated that he understood.

The employer agreed to future compliance and agreed and has already paid the back wages due to (b) (6), (b) (7)(C) Mr. Roberts provided proof of payment, as well.

(b) (6), (b) (7)(C) Notification: **(b) (6), (b) (7)(C)** was notified of the status of the investigation on 08/05/2016.

Publications Provided: HRG, Fact Sheet 44, Fact Sheet 73, FLSA, and Federal Register Volume 75, No. 244 Reasonable Break Time for Nursing Mothers

Recommendation: Back wages due have already been paid and proof of payment has been provided. This WHI recommends that case file be administratively closed **(b) (7)(E)**.

Future Correspondence:

Sam Roberts
Assistant General Counsel
Wage & Hour, Employment Division
Phone 479-277-0181
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sam.roberts@walmartlegal.com

(b) (6), (b) (7)(C)
Investigator

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1767264 Originating District: West Covina District Office
Local Filing Number: 2015-186-07753 Investigating District: West Covina District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 07/29/2015
Assignment Date: 07/29/2015

Employer Information

Trade Name: Toys R Us Legal Name: Toys R Us, Inc.
Address: 960 Lakes Drive EIN: 13-6169250
County: Los Angeles
NAICS Code: 451120
West Covina, CA91790 No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 08/13/2013 BNPI:
To: 08/12/2015 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Full Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	
Total Violations Under FLSNM:	2						\$0.00

FMLA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FMLA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

20.25 Hrs. 3(s)(1)(A) Cov. Full Inv. (b) (6), (b) (7)(E) was not prov. adeqt. space to express milk nor was (b) (6), (b) (7)(E) prov. breaks to express milk. IC was held on 08/12/15 w/Mgr Albert Preciado & HR Rep. ER stated their was a miscom. bwn tiers of mgmt and (b) (7)(E) (b) (6), (b) (7)(E) (b) (7)(E) FC held on 10/21/15 w/Albert Preciado & HR Rep. Vios fd dis. in detail. ER has remedied all vios fd. & will be conducting new training for FLSNM policies. Pubs provided for FLSA, FLSNM, FMLA & CL. Rec. admin closure w/no frthr act.

WHI Signature: _____ Date: 10/27/2015

Reviewed By: _____ Date: _____

FLSNM Narrative Report

Reason for Investigation:

This investigation was initiated as a result of (b) (7)(E) (b) (6), (b) (7)(C) of the ER. (b) (6), (b) (7)(C) (b) (7)(E) (b) (6) employer failed to provide (b) (6) with reasonable break time to express breast milk for (b) (6) nursing child, as well as providing an adequate place other than a bathroom that is shielded from view and free from intrusion from co-workers and the public to express breast milk under Break Time for Nursing Mother's Law (FLSNM) [See Exhibit B-1].

FLSNM Coverage:

Subject firm is the world's leading dedicated toy and baby products retailer, offering differentiated shopping through its family of brands and products. Merchandise is sold in over 863 Toys "R" Us and Babies "R" Us stores in the United States and Puerto Rico, and in 740 international stores and 245 licensed stores in 38 countries and jurisdictions. (b) (4)

The company was founded in 1948 and is headquartered in Wayne, New Jersey under the legal name Toys "R" Us – Delaware, Inc. which is a subsidiary of Toys "R" Us, Inc., and it is doing business as Toys "R" Us and Babies "R" Us.

Toys "R" Us, Inc. [hereinafter the ER] a Delaware State Corporation filed on February 12, 1948 [See Exhibit C-7]. Its headquarters was based out of Delaware but then moved to Wayne, New Jersey. This is a multi-unit enterprise located within the boundaries of the West Covina District Office. The ER is owned by a consortium of investors. Affiliates of Bain Capital Partners, LLC owns (b) (4) of Toys "R" Us, Inc., including Bain Capital (TRU) VIII, L.P., Bain Capital (TRU) VIII-E, L.P., Bain Capital (TRU) VIII Coinvestment, L.P., Bain Capital Integral Investors, LLC and BCIP TCV, LLC (the "Bain Capital Funds"). The Bain Capital Funds are all affiliates of Bain Capital Partners, LLC. Bain Capital Partners, LLC disclaims beneficial ownership of such shares. The Bain Capital Funds each have an address c/o Bain Capital Partners, LLC – 111 Huntington Avenue – Boston, MA 02199.

Toybox Holdings, LLC owns (b) (4) of Toys "R" Us, Inc. Shares of Toys "R" Us, Inc. owned of record by Toybox Holdings, LLC are also beneficially owned by its majority member, KKR Millennium Fund, Limited Partnership. KKR Millennium GP, LLC is the general partner of KKR Associates Millennium L.P., which is the general partner of the KKR Millennium Fund, Limited Partnership. Messrs., Henry R. Kravis, George R. Roberts, James H. Greene, Jr., Paul E. Raether, Michael W. Michelson, Perry Golkin, Johannes P. Huth, Todd A. Fisher, Alexander Navab, Marc S. Lipshultz, Reinhard Gorenflos, Jacques Garaialde, Michael M. Calbert, and Scott C. Nuttall, as members of KKR Millennium GP, LLC, but disclaim such beneficial ownership. The address of KKR Millennium GP, LLC and each individual listed above is c/o Kohlberg Kravis Roberts & Co., L.P., 2800 Sand Hill Road – Menlo Park, California 94025.

Finally, Vornado Truck, LLC owns (b) (4) of Toys "R" Us, Inc. Vornado Truck, LLC is an affiliate of Vornado Realty Trust, having an address of 888 Seventh Avenue – New York, New York 10019. The Chief Executive Officer of both Toys "R" Us – Delaware, Inc. and Toys "R" Us, Inc. is David Brandon, whose is located in the corporate office at One Geoffrey Way, Wayne, New Jersey 07470.

The Toys "R" Us store located in West Covina, California is run by the Store Manager Albert Preciado. The ER is being represented by in-house legal counsel Danielle P. Torok who advised that all communication and interaction with governmental agencies is done through the firms Employee Relations Generalist, Laura Hedge. Mr. Preciado is in charge of running the day-to-day operations of the West Covina, California store. He is in charge of the preparation of the firm's payroll, employee work schedules, hires and fires

employees, and is in charge of all of the financial aspects of the West Covina, California store. Mr. Preciado is the 3(d) employer under the FLSA. This was a full investigation under the provisions of the "Break Time for Nursing Mother's Law" under the FLSA and (b) [REDACTED].

ADV for the past three calendar years was as follows: 2012 - (b) (4) [REDACTED]; 2013 - (b) (4) [REDACTED]; 2014 - (b) (4) [REDACTED]. Year-to-date ADV for 2015 is (b) (4) [REDACTED] so far. See exhibits C-3 through C-6(e) for copies of consolidated year end statements. Employees are covered on an enterprise basis under Section 3(s)(1)(A) of the FLSA throughout the period of investigation (08/13/2013 to 08/12/2015). This is a limited investigation focused on the provisions of the FLSNM regulations (technical errors in WHISARD did not allow WHI (b) (6), (b) (7)(C) [REDACTED] or management to label case as a limited investigation). While the ER is considered a retailer the Special Provisions under the Grandfather Clause do not apply to this employer as employees are covered on an enterprise basis and the firm exceeds the increased annual dollar volume test for enterprise coverage. The Grandfather Clause only applies to any enterprise that ceases to be covered by virtue of the increase in the enterprise coverage dollar value test. See exhibits E-1 to E-2(a)(k) for the profile pay period ending 08/01/2015. Employees at the firm process paperwork via the internet on a daily basis, they use the internet to send and receive emails, and they use fax machines to conduct their daily business. The ER also employs over 50 employees in the West Covina, California location and over 60,000 nationwide in 20 or more workweeks in the current and preceding calendar year per §825.105(e) and §825.101(2)(B)(ii) and thus is a covered employer under §825.104 of the Family Medical Leave Act. A meeting was held with Mrs. Laura Hedge, Employee Relations Generalist and (b) (6), (b) (7)(C) [REDACTED] Store General Manager. The firm also has in-house legal counsel Danielle P. Torok to represent them if needed, but all contact was done with Mrs. Hedge. Mrs. Hedge acted directly in the interest of the employer per §825.104(d). This investigation is focused on the provisions of the FLSNM Laws with respect to (b) (6), (b) (7)(C) [REDACTED] (b) (7)(E) [REDACTED], the ER's FMLA policy, and the provisions of the FLSA.

MODO:

This is a multi-unit enterprise located within the boundaries of the West Covina District Office. The firm is headquartered out of Wayne, New Jersey. The Northern New Jersey District Office is the MODO for the ER. (b) (7)(E) [REDACTED]

Exemptions:

Since this investigation was initiated under the "Break Time for Nursing Mothers Law" no exemptions were tested nor were any claimed by the employer for (b) (6), (b) (7)(C) [REDACTED] is not exempt from Section 7 of the FLSA and therefore is entitled to breaks to express breast milk.

Status of Compliance:

History:

This is the first known investigation of the West Covina, California location. No prior history was found in WHISARD. (b) (7)(E) [REDACTED] of other locations were found in WHISARD across the nation [See Exhibit D-8 to D-8(k)]. (b) (7)(E) [REDACTED] are out of the Tampa Florida District Office under Case ID number 1663415 in June of 2012. The lead investigator was (b) (6), (b) (7)(C) [REDACTED]. The investigation was an FLSA (b) (7)(E) [REDACTED] for failure to pay wages that resulted in \$166.75 in minimum wage violations. The ER agreed to pay and agreed to comply in the future [See Exhibits D-8(a) to D-8(b)]. The second investigation was out of the

Denver, Colorado District Office in February of 2012 under case ID number 1645637. This was a full investigation under the provisions of the FMLA. The lead investigator was (b) (6), (b) (7)(C) and a total of \$2,500.00 in FMLA back wages was found to remedy the EE's denial of leave. The ER agreed to pay and agreed to comply in the future [See Exhibits D-8(c) to D-8(i)]. The third investigation was out of the Indianapolis, IN District Office in June of 2011 under case ID number 1624352. The lead investigator was (b) (6), (b) (7)(C) did not want to provide permission to use his name so the investigation was dropped [See Exhibits D-8(j) to D-8(k)].

Status:

The investigation was initiated (b) (7)(E) (b) (6), (b) (7)(C) [hereinafter the EE], (b) (6), (b) (7)(C) of the ER (b) (6), (b) (7)(C) addressed specific issues that the ER failed to provide (b) (6) with reasonable break time to express breast milk for (b) (6), nursing child, as well as providing an adequate place other than a bathroom that is shielded from view and free from intrusion from co-workers and the public to express breast milk under Break Time for Nursing Mother's Law. (b) (7)(E) A review of the ER's FMLA policy [See Exhibits D-6 to D-6(f)], and FMLA designation notices [See Exhibits D-5 to D-5(a)(f)] revealed that the firm's FMLA policy is in compliance with required provisions of the Act.

A visit was made to the establishment on August 12, 2015 by WHI (b) (6), (b) (7)(C). An initial conference was held with Mrs. Laura Hedge, Employee Relations Generalist and Mr. Albert Preciado, Store Manager. Mrs. Hedge stated that before the initial conference she spoke to Mr. Preciado and found that there was miscommunication from management to (b) (6), (b) (7)(C) in regards to (b) (6)'s request to express breast milk. She stated that Mr. Preciado is a new store manager and that he has little experience dealing with the "Break Time for Nursing Mother's Law." Mrs. Hedge stated that they were willing to do whatever it took to make sure the company was in compliance with all of the federal laws applicable to their firm. Company background information was gathered, records were reviewed and scanned, and additional records were requested. From this visit WHI (b) (6), (b) (7)(C) learned the following:

The ER is a covered employer under the statutes of the FLSNM and FMLA. (b) (7)(E) the ER provided the following information: the ER's leave year is a rolling 12-month period measured backward from the date the employees seek to use FMLA. The ER has postings in all break rooms and near time clocks that explain rights and responsibilities under FMLA. FMLA information is also distributed to all employees upon hire via their employee website.

The employer has a system in place along with constant communication from their Leave Administrator that notifies employees of their eligibility to take FMLA leave within five (5) business days from when the employee requests FMLA leave, or when the employer acquires knowledge that an employee's leave may be for an FMLA-qualifying reason, absent extenuating circumstances. The eligibility notice [See exhibit D-5(n)] clearly states if an employee is eligible for FMLA as defined in §825.110(a).

The ER provides written notice detailing the specific expectations and obligations of the employees and explains the circumstances of a failure to meet the obligations. The ER provides an FMLA Designation Notice [See Exhibit D-5(f)] that outlines that status of the FMLA request, if any additional information is needed, and a reason and explanation if leave is not approved. A copy of all the templates that the ER uses was provided to WHI Olea to review [See exhibit D-5 to D-5(a)(f)]. The policy review revealed no apparent violations under the FMLA provisions [See Exhibits C-2 to C-2(e)].

When asking Mr. Preciado why (b) (6), (b) (7)(C) was not provided time to express breast milk or an adequate space to express breast milk, he stated that he had informed his management team to assist him with (b) (6), (b) (7)(C) request and did not know what had happened until the initiation of the investigation. Mr. Preciado stated he informed his management team that the employees could use any room in the store to express breast milk. He did not know one of his managers had told (b) (6), (b) (7)(C) to use the women's restroom and that they were only providing two breaks a day to express milk.

The case was put on hold for the next couple of weeks as WHI (b) (6), (b) (7)(C) was working on a Regional Office Training Team initiative and task force project.

The following violations were found as a result of the investigation:

Section 6: Upon reviewing the information from the ER's payroll register and daily timecards WHI (b) (6), (b) (7)(C) found that none of the employees were paid less than (b) (4) an hour. No apparent violations were found under Section 6 of the FLSA.

Section 7: Upon reviewing the information from the ER's payroll register and through employee interviews WHI (b) (6), (b) (7)(C) found that most of the employees are not working over 40 hours a week. No apparent violations were found under Section 7 of the FLSA.

Section 7(r) of the FLSNM - Break Time for Nursing Mothers Provisions:

Section 7(r)(1)(A): Requires an employer to provide a "reasonable break time for an employee to express breast milk for (b) (6), (b) (7)(C) nursing child for one (1) year after the child's birth each time such employee has need to express the milk."

The firm failed to provide "reasonable break time" for (b) (6), (b) (7)(C) who requested time to express breast milk throughout the day. (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) requested time to express breast milk from one of (b) (6), (b) (7)(C) immediate supervisors by the name of (b) (6), (b) (7)(C). (b) (6), (b) (7)(C) only allowed to take (b) (6), (b) (7)(C) regularly scheduled breaks and was denied permission to take additional breaks and was informed that (b) (6), (b) (7)(C) could only express breast milk during the established 15-minute break or lunch period. (b) (6), (b) (7)(C) was unable to express (b) (6), (b) (7)(C) breast milk during the break period due to the shortness in time, thus (b) (6), (b) (7)(C) resorted to using (b) (6), (b) (7)(C) lunch break to express it on some days. Since (b) (6), (b) (7)(C) was unable to express (b) (6), (b) (7)(C) breast milk throughout the day as needed (b) (6), (b) (7)(C) experienced pain and swelling throughout (b) (6), (b) (7)(C) shift.

Mr. Albert Preciado, Store Manager stated that he was unaware that one of his managers was not allowing his employees to express breast milk as needed. He stated that (b) (6), (b) (7)(C) never approached him to remedy the problem (b) (6), (b) (7)(C) was facing when requesting time to express breast milk. Mr. Preciado stated that managers will need to be retrained to deal with sensitive requests from employees when it comes to FLSNM or FMLA requests.

Section 7(r)(1)(B): Requires an employer to provide a "place other than a bathroom, that is shielded from view and free from intrusions from coworkers and the public, which may be used by an employee to express breast milk."

A tour of the establishment revealed that (b) (6), (b) (7)(C) was told to use the women's restroom/mothers room to express breast milk during (b) (6), (b) (7)(C) company scheduled breaks [See Exhibit E-4 to E-4(d)]. (b) (6), (b) (7)(C) (b) (7)(E) (b) (6), (b) (7)(C) stated that all other rooms in the company needed to stay open and free for training. (b) (6), (b) (7)(C) (b) (7)(E) more than one of (b) (6), (b) (7)(C) male coworkers walked in on (b) (6), (b) (7)(C) to clean the restroom while (b) (6), (b) (7)(C) was expressing milk. (b) (7)(E) (b) (6), (b) (7)(C) were (b) (7)(E) during the

initial conference when Mr. Preciado disclosed that he had found out (b) (6), (b) (7)(C) was being mandatorily required to use the restroom instead of one of the many empty offices. Management failed to provide employees a designated private area to express milk.

Section 11: Upon reviewing the information from the ER's company records and through employee interviews WHI (b) (6), (b) (7)(C) found that the ER is in compliance with the recordkeeping regulations of the FLSA.

Section 12: No evidence was found that the ER employed any minors during the period of investigation. No apparent violations were found under Section 12 of the FLSA.

Disposition:

A final conference was held October 21, 2015 at the firm with Mrs. Laura Hedge, Employee Relations Generalist and Mr. Albert Preciado, Store Manager. WHI (b) (6), (b) (7)(C) was present for this conference. The requirements under FLSA, FLSNM, and FMLA were discussed in detail with the ER. WHI (b) (6), (b) (7)(C) explained to the ER how the firm is covered under the provisions of the FLSA, FLSNM, and FMLA.

While the investigation was focused on the regulations set forth by the FLSNM an FMLA policy review was done. WHI (b) (6), (b) (7)(C) also explained the record keeping requirements and hours worked provisions under the FLSA and that records pertaining to hours worked must be kept for 2 years. Specifically WHI informed the ER that employees have to be paid for all hours worked regardless of if the work was authorized or not. WHI also explained the 541 exemptions thoroughly and explained in detail the child labor regulations set forth by the FLSA. WHI (b) (6), (b) (7)(C) disclose to the parties at the final conference the FLSNM violations that were found.

Mrs. Hedge stated that she always makes sure that there is an open line of communication between employees and upper management with the corporate office. She encourages employees to speak directly to HR if they encounter any problems or any issues they might have with policies at the local hubs. Mrs. Hedge conveyed that the ER treats its employees with the utter most respect and tries to accommodate every employee the best way that the company can. Mr. Preciado stated that there was some miscommunication between the tiers of management and the information that is being disseminated to the employees.

Mrs. Hedge stated that she was very confident that the firm would be in compliance therefore they did not use the services of their in-house legal counsel for the final conference. She also reiterated that the FLSA, FLSNM, and FMLA information found on the companies' intranet for all of the employees answers most of the questions they might have. Nevertheless, she stated that she has been in constant communication with the corporate office and many other offices in the nation to make sure adequate up-to-date training is provided on the regulations set forth by the FLSNM to make sure management was aware of the federal requirements set forth by the FLSNM law.

WHI (b) (6), (b) (7)(C) conveyed to the employer the Federal Labor regulations set forth by the Fair Labor Standards Act, FLSNM and recapped FMLA coverage in detail. WHI (b) (6), (b) (7)(C) also explained to the employer that if the Wage and Hour Division were to conduct another investigation down the line where any areas of non-compliance were found under the FLSA, FLSNM or FMLA, the employer could be liable for back wages, an equal amount in liquidated damages, and Civil Money Penalties.

A copy of the FLSA HRG was provided to the ER on 08/12/2015. On 10/21/2015 WHI Olea provided the ER with copies of Regulations

Part 516, 541, 778, 785 and CL-101 and another copy of the HRG. FMLA Regulations Part 825 and fact sheets 28 and 28D were also provided along with an FMLA employee guide. Conclusively fact sheet #73 (Break Time for Nursing Mothers) was also provided along with information on the FLSNM regulations that can be found on the Wage and Hour website.

The ER agreed to comply with all provisions of the FLSA, FLSNM and FMLA in the future and has remedied (b) (7)(E) (b) (6), (b) (7)(C). The firm has now assigned a dedicated room that is not a restroom for women to express breast milk. They have put a sign on the door restricting access to any other employee in the company. The room is free of clutter and is equipped with many electrical outlets. It has a table and chairs and is has enclosed doors that can be locked from the inside only [See Exhibit E-5 to E-5(c)]. WHI (b) (6), (b) (7)(C) stated to Mrs. Hedge and Mr. Preciado that they are able to call the Wage and Hour Division if they had any questions or concerns regarding any FLSA, FLSNM or FMLA laws and regulations in the future.

(b) (6), (b) (7)(C) Notification:

(b) (6), (b) (7)(C) was notified of the results of the investigation on 10/21/2015 following the final conference. WHI (b) (6), (b) (7)(C) explained that (b) (7)(E) and that the ER had remedied the problem. WHI (b) (6), (b) (7)(C) explained to EE that the case would be submitted for conclusion. The EE was grateful that WHI (b) (6), (b) (7)(C) conducted an investigation and was very happy with the timeliness of how fast WHI (b) (6), (b) (7)(C) went out to the firm to make sure that everything was in compliance with the FLSNM regulations. (b) (6), (b) (7)(C) stated that following the initial conference management apologized for the inconvenience and stated that they would work with (b) (6), (b) (7)(C) to make sure (b) (6), (b) (7)(C) is able to express breast milk when needed in a safe and adequate space.

Recommendations:

Section 7(r)(1)(A) and 7(r)(1)(B) violations found. The ER has now remedied the violations and has agreed to comply in the future with the FLSA, FLSNM, and FMLA regulations. WHI (b) (6), (b) (7)(C) recommends that the file be concluded administratively with no further action.

Summary:

- Section 7(r)(1)(A) and 7(r)(1)(B) violations found
- FMLA Policy Review revealed no apparent violations
- ER agreed to compliance in the future and has remedied FLSNM violations
- WHI Olea recommends case be concluded administratively with no further action

(b) (6), (b) (7)(C)

Wage-Hour Investigator (WHI)

West Covina District Office

October 26, 2015

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1776269 Originating District: Los Angeles District Office
Local Filing Number: 2016-231-08354 Investigating District: Los Angeles District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 11/09/2015
Assignment Date: 01/08/2016

Employer Information

Trade Name: Paula's Pancake House
Address: 1531 Mission Dr.

Solvang, CA93463

Legal Name: Charles A. Greenwald
EIN: 95-2899211
County: Santa Barbara
NAICS Code: 722110
No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 04/25/2014 BNPI:
To: 04/24/2016 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Full Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: 11/30/2016
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSA Totals:	1	1	\$333.20	\$333.20	\$333.20	\$333.20	
Total Violations Under FLSA:		1					\$374.00

WHISARD Compliance Action Report

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	6	\$0.00	\$0.00	\$0.00	\$0.00	
Total Violations Under FLSNM:	15						\$0.00

FMLA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FMLA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	1	Unduplicated Employees Agreed:	1
Total Amount BWs Computed:	\$333.20	Total Amount BWs Agreed:	\$333.20
Total Amount LDs Computed:	\$333.20	Total Amount LDs Agreed:	\$333.20

Conclusions & Recommendations:

(b) (7)(E) failure to comply with the nursing mothers' provision of the FLSA as well as retaliatory action against Ent. cov. estab.
 ER failed to provide several EEs who were nursing mothers with sufficient break time to express breast milk (Sec. 7(r)(1)(A)) and adequate space to express breast milk (Sec. 7(r)(1)(B)).
 ER also violated Sec. 15(a)(3) prohibition against retaliation. (b) (7)(E) had (b) (6) schedule reduced, which resulted in \$333.20 in BW and equal amt. in LD. (b) (7)(E)

WHI Signature: _____ Date: 11/03/2016

Reviewed By: _____ Date: _____

<u>Trade Name:</u>	<u>Paula's Pancake House</u>	<u>Case ID #:</u>	<u>1776269</u>
<u>Legal Name:</u>	Charles A. Greenwald	<u>Case File:</u>	2016-231-08354
<u>Address:</u>	1531 Mission Drive	<u>EIN:</u>	95-2899211
	Solvang, CA 93463		
<u>Employer:</u>	Charles A. Greenwald		
<u>Phone Number:</u>	805-688-2867		

Fair Labor Standards Act (FLSA) - Narrative Report

Reason for the Investigation: This investigation was initiated by (b) (6), (b) (7)(C) (b) (7)(E) was denied (b) (6), (b) (7)(C) rights under Section 7(r) of the Act. (b) (6), (b) (7)(E) was denied sufficient time to express milk, inadequate space to express milk, and that the employer retaliated against (b) (6), (b) (7)(C) for asking for the space and time to express milk. (b) (6), (b) (7)(C) (b) (7)(E) was reassigned to a slower section of the restaurant where (b) (6), (b) (7)(C) was not able to earn as much tips and was subjected to negative comments about (b) (6), (b) (7)(C) choice to breastfeed (b) (6), (b) (7)(C) child.

Coverage

Enterprise Coverage: the firm had an Annual Dollar Volume (ADV) that exceeded \$ 500,000.00 during the years of 2013, 2014, and 2015 and had two or more employees during the said period who handled goods that were moved in interstate commerce such as point-of-sale devices used in the restaurants. The ADV for those years was: 2013 - (b) (4), 2014 - (b) (4), and 2015 - (b) (4) (See C-1 Exhibit). Therefore, enterprise coverage under Section 3(s)(1)(A) was applied to 2014, 2015, and 2016.

Period of Investigation: The initial conference and site visits commenced on 04/13/2016 with Mr. Charles A. Greenwald (sole proprietor), Daniel Greenwald (manager and owner's son), Evelyn Gutierrez (Manager), and WHI (b) (6), (b) (7)(C) at the employer's establishment (See C-1 Exhibit). WHI (b) (6), (b) (7)(C) set the period of investigation from 04/25/2014 to 04/24/2016.

Nature of Business: Paula's Pancake House is a restaurant which serves breakfast and lunch to customers in the Solvang, CA area.

Section 3(d) - Employer: Mr. Charles A. Greenwald is the sole proprietor and the person in charge of the overall operation of the business. Moreover, Mr. Daniel J. Greenwald is the director of operations and has gradually taken over the overall operations of the business. For the purposes of this investigation, both Mr. Charles A. Greenwald and Mr. Daniel J. Greenwald were found to meet the

definition of an employer as defined in Section 3(d) of the Act.

Business Structure: Paula's Pancake House is a sole proprietorship. The sole proprietor, Mr. Charles A. Greenwald is the only owner.

Branch Establishments and Business hours: The company has a total of 3 branches. Their respective addresses and business are listed below (See C-6 Exhibits):

Paula's Pancake House (Headquarters)

1531 Mission Dr.
Solvang, CA 93463
Distance to The Belgian Café: 0.3 Miles
Distance to the Burger Barn: 4.0 Miles

The Burger Barn (Paula's Old Town Burger Barn)

3621 Sagunto St.
Santa Ynez, CA 93460
Distance to The Belgian Café: 3.8 Miles
Distance to Paula's Pancake House: 4.0 Miles

The Belgian Café

1671 Copenhagen Dr.
Solvang, CA 93463
Distance to Paula's Pancake House: 0.3 Miles
Distance to The Burger Barn: 3.8 Miles

All of the branches were centrally managed by the owner Charles A. Greenwald and located within a 5-mile radius. Traffic does not seem to be an issue in moving from one location to the other. However, parking spaces can be scarce depending on the time of the day because it is a touristic area.

MODO Information: (b) (7)(E)

MODO instructions did not require any special handling of the cases.

Workforce: The firm currently employs (b) (4) employees among the 3 different locations. Paula's Pancake House employed (b) (4) employees.

Payroll: Workweek is defined as starting on Monday and ending on Sunday. Payroll is completed on a biweekly basis and the payday is on Fridays (C-1 and D-5 Exhibits). Profile pay period from 09/21/2015 to 10/04/2015 was also provided (D-5 Exhibits).

Exemptions

The following exemptions were also tested:

29 CFR §541.100 (Executive Exemption): (b) (6), (b) (7)(C) was found to be exempt from the provision of Section 6 and 7 of the Act because (b) (6), (b) (7)(C) salary and duties met the requirements of the executive exemption. (b) (6), (b) (7)(C) gives input in the hiring process (B-5 Exhibit) and receives a salary that exceeds \$455.00 per week (D-7 Exhibits).

29 CFR §541.100 (Executive Exemption): (b) (6), (b) (7)(C) was also found to be exempt from the provisions of Section 6 and 7 of the Act because (b) (6), (b) (7)(C) salary and duties met the requirements of the executive exemption. According to (b) (6), (b) (7)(C) opinion on whether an employee is not performing well could have an impact in the owner's decision to fire the employees. (b) (6), (b) (7)(C) also recommends people (b) (6), (b) (7)(C) knows to positions at the company (B-6 Exhibit). (b) (6), (b) (7)(C) is also paid a salary that exceeds \$455.00 per week (D-7 Exhibits).

Section 7(r)(3): The employer could not claim that compliance with the provisions of Section 7(r) would impose undue hardship to the company. The undue hardship defense applies to any employer with fewer than 50 employees that can prove that compliance with Section 7(r) would cause "significant difficulty or expense." For the purposes of determining the total number of employees, 75 Fed. Reg. 244, p. 80077 states that all work sites should be included and any individual employee must be counted, regardless of whether it is a full time or part time employee. The employer employs more than 50 employees among three different location (See Coverage Section above), and therefore does not meet the statutory requirement for the undue hardship defense.

No other exemptions were claimed, tested, or found to be applicable to the company.

Status of Compliance

Prior History: The firm has no prior history with the Wage and Hour Division.

Result of Investigation: (b) (7)(E) during the investigation period. (b) (6), (b) (7)(C) and other nursing mothers were not allowed to take a reasonable break to express milk. The employer also failed to provide a functional space for the nursing mothers to express milk. Lastly, the employer also retaliated against the complainant after (b) (6), (b) (7)(C) asked the employer to allow (b) (6), (b) (7)(C)

time and space to express milk. Such retaliation created a hostile environment for all the nursing mothers, discouraging them from taking (b) (6), (b) (7)(C) breaks. The violations are explained in detail in the following sections:

Section 6: The investigation found that the company paid hourly rates in excess of \$7.25 to every employee. The company paid its employees based on the California State MW, which was consistently higher than \$7.25 per hour (D-5 Exhibits). The ER takes credit for meals provided to EEs. Although there was some evidence that the ER was pressuring EEs to stay in the meal deduction program (B-9 Exhibits), such deductions did not cause MW violations because EEs were paid hourly rates well above \$7.25 per hour.

Section 7: The investigation also concluded that the company generally computed and paid overtime at time-and-a-half rates for all hours worked beyond 40 in a workweek (D-5 Exhibits).

Section 7(r)(1)(A): This section of the FLSA states that “an employer shall provide a reasonable break time for employees to express breast milk for her nursing child for one year after the child's birth each time such employee has the need to express the milk.”

75 Fed. Reg. 244 (December 21, 2010) also provided further guidance on the requirements of Section 7(r). Employer should consider many factors in determining what a reasonable break length and the frequency of the breaks to express milk. A nursing mother typically needs two to three breaks to express milk in an 8 hour shift (75 Fed. Reg. 244, p. 80075). Expressing milk typically takes 15 to 20 minutes (75 Fed. Reg. 244, p. 80075). However, these guidelines vary depending on the individual needs of the employee (75 Fed. Reg. 244, p. 80075).

The investigation (b) (7)(E) the employer failed to allowed the nursing mothers to take their pump breaks as frequently as they needed. There were five nursing mothers working at Paula's Pancake House and one nursing mother working at the Belgian Cafe within the investigation period. The specific circumstances to each nursing mother are explained as follows:

(b) (6), (b) (7)(C) has stated that (b) (6), (b) (7)(C) chose to express breast milk in the own car because (b) (6), (b) (7)(C) felt more comfortable in (b) (6), (b) (7)(C) car than in the restaurant's office (B-1 Exhibits). (b) (6), (b) (7)(C) also stated that (b) (6), (b) (7)(C) did not take additional breaks to express breast milk because (b) (6), (b) (7)(C) is afraid to lose (b) (6), (b) (7)(C) shift (B-1 Exhibits). (b) (6), (b) (7)(C) only express milk during (b) (6), (b) (7)(C) 30-minute lunch breaks. (b) (6), (b) (7)(C) did not request any additional break to express milk. Other employees also corroborated the fact that (b) (6), (b) (7)(C) would not request the pump breaks in addition to (b) (6), (b) (7)(C) lunch break for fear of retaliation (B-8 and B-9 Exhibits). Because management created a hostile environment against the nursing mothers, it was found that the employer constructively denied pump breaks to (b) (6), (b) (7)(C) as frequently as (b) (6), (b) (7)(C) needed.

(b) (6), (b) (7)(C): Managers (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) discouraged (b) (6), (b) (7)(C) from exercising (b) (6), (b) (7)(C) right to pump breaks (B-2 Exhibits). The managers told (b) (6), (b) (7)(C) that “allowing breaks to pump breast milk in the office was a burden to the restaurant” (B-2 Exhibits). The managers also told (b) (6), (b) (7)(C) that employees should not come back to work unless they are not breast feeding anymore (B-2 Exhibits). During a meeting with Mr. Charles Greenwald, (b) (6), (b) (7)(C) explained that (b) (6), (b) (7)(C) was under the impression that pump breaks were an inconvenience to the managers (B-2 Exhibits). The managers later reprimanded (b) (6), (b) (7)(C) because of (b) (6), (b) (7)(C) remarks to Mr. Greenwald about the inconvenience of the breaks (B-2 Exhibits). Such harassment was also corroborated by other nursing mothers (See B-8 and B-9 Exhibits). The manager's remarks were made within two weeks of returning from maternity leave. Such direct discouragement to take pump breaks is a constructive denial of break time to express breast milk. As a result of the constructive denial to take breaks to express milk, (b) (6), (b) (7)(C) decided to pump only during (b) (6), (b) (7)(C) lunch breaks and did not request additional pump breaks beyond (b) (6), (b) (7)(C) lunch break. (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) would have made use of (b) (6), (b) (7)(C) rights if management had not created such hostile environment (B-2 Exhibits).

(b) (6), (b) (7)(C) worked at the Belgian Café location, and dealt with a different manager (b) (6), (b) (7)(C). Although (b) (6), (b) (7)(C) expressed breast milk every two hours during her maternity leave, (b) (6), (b) (7)(C) decided to reduce the frequency in which (b) (6), (b) (7)(C) expressed breast milk because (b) (6), (b) (7)(C) did not want to lose the opportunity to earn more tips (B-4 Exhibits). (b) (6), (b) (7)(C) was on unemployment insurance pay for such a long time, that (b) (6), (b) (7)(C) needed to earn more tips. (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) was not coerced in any way when making such decision (B-4 Exhibits). (b) (6), (b) (7)(C) also stated that Mr. Greenwald was supportive of (b) (6), (b) (7)(C) decision to express milk, and that (b) (6), (b) (7)(C) could take additional breaks if the restaurant was busy or if there were enough waitresses on the floor to cover all sections (B-4 Exhibits). (b) (6), (b) (7)(C) also allowed (b) (6), (b) (7)(C) to take additional 10 minutes on (b) (6), (b) (7)(C) lunch break if needed to express breast milk. A violation of section 7(r)(1)(A) (b) (7)(E) (b) (6), (b) (7)(C) in regards to (b) (6), (b) (7)(C) needs because (b) (6), (b) (7)(C) deliberately chose not to take additional breaks beyond (b) (6), (b) (7)(C) lunch break to express breast milk.

(b) (6), (b) (7)(C) was denied the breaks and contracted mastitis as a result to lack of pumping. Several attempts were made to clarify the exact dates of the infection and request additional evidence such as receipts and doctors notes (B-7 Exhibits). Although (b) (6), (b) (7)(C) did respond to some of WHI (b) (6), (b) (7)(C) contact attempts, (b) (6), (b) (7)(C) did not provide any evidence of the costs or responded to contact attempts (B-7 Exhibits). Nevertheless, (b) (6), (b) (7)(C) statement (b) (7)(E) the ER violated this requirement by failing to provide sufficient break time to express breast milk.

(b) (6), (b) (7)(C) Managers (b) (6), (b) (7)(C), and Daniel Greenwald also made

comments to discourage (b) (6), (b) (7)(C) from expressing breast milk at work (B-8 Exhibits). (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) believes that the managers reassigned (b) (6), (b) (7)(C) to a later shift to prevent (b) (6), (b) (7)(C) from taking additional pump breaks beyond (b) (6), (b) (7)(C) lunch and regular break (B-8 Exhibits). It was found that the ER constructively denied sufficient time to express milk by creating a hostile environment against the nursing mothers, as well as purposely changing (b) (6), (b) (7)(C) schedule to prevent additional pump breaks.

(b) (6), (b) (7)(C): Managers (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) also discouraged (b) (6), (b) (7)(C) from exercising (b) (6), (b) (7)(C) right to pump breaks (B-8 and B-9 Exhibits). Managers made remarks implying that (b) (6), (b) (7)(C) should stop breastfeeding (B-8 and B-9 Exhibits). Moreover, managers “rolled their eyes” and made it clear to the nursing mothers that they were very irritated about the requests to take pump breaks (B-8 and B-9 Exhibits). (b) (6), (b) (7)(C) insinuated that (b) (6), (b) (7)(C) should only pump on (b) (6), (b) (7)(C) lunch breaks (B-9 Exhibits). Managers would also have (b) (6), (b) (7)(C) wait to take (b) (6), (b) (7)(C) additional break when the restaurant wasn't busy (B-9 Exhibits). Eventually, (b) (6), (b) (7)(C) gave up asking for additional pump breaks and started pumping only during (b) (6), (b) (7)(C) lunch breaks (B-9 Exhibits). The company violated the provisions of this section by constructively and directly denying (b) (6), (b) (7)(C) breaks in the frequency needed.

Section 7(r)(1)(B): This section of the FLSA states that “an employer shall provide a place, other than a bathroom, that is shielded from view and free from intrusion from co-workers and the public, which may be used by an employee to express breast milk.”

75 Fed. Reg. 244 also provides further guidance on the space to express breast milk. An employer may be in compliance with the requirements by creating a space with partitions or curtains (75 Fed. Reg. 244, p. 80075). If a room is converted, any windows should be shielded from view (75 Fed. Reg. 244, p. 80076). The room must also contain a place for the nursing mother to sit and a flat surface other than the floor to place the pumping equipment (75 Fed. Reg. 244, p. 80076).

Paula's Pancake House and The Burger Barn had converted spaces that can be used as a place to express milk (D-2 and D-3 Exhibits). The Belgian Café does not have an available place for expressing breast milk at all.

The employer converted an office space at Paula's Pancake House in order to provide space for expressing milk to the nursing mothers. Although the converted space had blinds and a functioning lock at the initial visit (D-2 Exhibits), employees stated that blinds were installed before WHI (b) (6), (b) (7)(C) first visit (B-7, B-8, B-9 Exhibits). Although the space requirements do not require a lock in the door, the space must be free from intrusion from the public and others.

The employer failed to provide reasonable breaks and adequate space to six employees. The specific

circumstances of the violations to each employee are explained below:

(b) (6), (b) (7)(C) has stated that (b) (6), (b) (7)(C) chose to express breast milk in the own car because (b) (6), (b) (7)(C) felt more comfortable in (b) (6), (b) (7)(C) car than in the restaurant's office (B-1 Exhibits). (b) (6), (b) (7)(C) also stated that (b) (6), (b) (7)(C) did not want to lose (b) (6), (b) (7)(C) section or shift, so (b) (6), (b) (7)(C) does not take additional breaks to express breast milk (B-1 Exhibits). Other employees also corroborated the fact that (b) (6), (b) (7)(C) would not request the office space to pump for fear of retaliation (B-8 and B-9 Exhibits). Because management created a hostile environment against the nursing mothers, it was found that the employer constructively denied (b) (6), (b) (7)(C) the use of the office space for the purposes of expressing breast milk as required by the Act. The failure to allow the use of the office to express milk occurred in spite of the fact that the office space was readily available and easily convertible into an adequate space to express breast milk (D-2 Exhibits).

(b) (6), (b) (7)(C): Managers (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) discouraged (b) (6), (b) (7)(C) from using the available office space to pump breast milk (B-2 Exhibits). The managers told (b) (6), (b) (7)(C) that "allowing breaks to pump breast milk in the office was a burden to the restaurant" (B-2 Exhibits). The managers also told (b) (6), (b) (7)(C) that employees should not come back to work unless they are not breast feeding anymore (B-2 Exhibits). During a meeting with Mr. Charles Greenwald, (b) (6), (b) (7)(C) explained that (b) (6), (b) (7)(C) was under the impression that pump breaks were an inconvenience to the managers (B-2 Exhibits). The managers later reprimanded (b) (6), (b) (7)(C) because (b) (6), (b) (7)(C) of (b) (6), (b) (7)(C) remarks to Mr. Greenwald about the inconvenience of the breaks (B-2 Exhibits). Such harassment was also corroborated by other nursing mothers (See B-8 and B-9 Exhibits). The manager's remarks were made within two weeks of returning from maternity leave. Such direct discouragement to take pump breaks is a constructive denial of the use of the office space to express breast milk. (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) would have taken made use of (b) (6), (b) (7)(C) rights if management had not created such hostile environment (B-2 Exhibits).

(b) (6), (b) (7)(C) did not have access to an adequate space to express milk at the Belgian Café. (b) (6), (b) (7)(C) expressed breast milk in the dry storage area of the restaurant (B-4 Exhibits). It is a walkway close to the wall (B-4 Exhibits). (b) (6), (b) (7)(C) would face the wall at the end of the walkway so that other employees would only see (b) (6), (b) (7)(C) back while (b) (6), (b) (7)(C) expressed milk (B-4 Exhibits). There could be ways in which the area could be blocked off, such as a curtain (B-4 Exhibits). There was no place to sit so (b) (6), (b) (7)(C) stood up the entire time (b) (6), (b) (7)(C) was expressing breast milk (B-4 Exhibits). Also, there was no place to rest the manual pump, so (b) (6), (b) (7)(C) held it the entire time (b) (6), (b) (7)(C) was expressing milk (B-4 Exhibits). Other employees would retrieve supplies from the dry storage area covering their eyes to give (b) (6), (b) (7)(C) some privacy (B-4 Exhibits). Thus, the employer failed to provide an adequate space for (b) (6), (b) (7)(C) to express breast milk as required by the Act.

(b) (6), (b) (7)(C) was denied adequate space to express breast milk (B-7 Exhibits). (b) (6), (b) (7)(C) requested the installation of blinds in the manager's office to shield the office from the public's view. The request was denied by (b) (6), (b) (7)(C) (B-7 Exhibits). Several attempts were made to clarify the exact dates of the infection and request additional evidence such as receipts and doctors notes (B-7 Exhibits). Although (b) (6), (b) (7)(C) did respond to some of WHI (b) (6), (b) (7)(C) contact attempts, (b) (6), (b) (7)(C) did not provide any evidence of the costs or responded to contact attempts (B-7 Exhibits). Nevertheless, (b) (6), (b) (7)(C) statement (b) (7)(E) that the employer violated this requirement by failing to provide adequate space to express breast milk.

(b) (6), (b) (7)(C): Although managers allowed (b) (6), (b) (7)(C) to use the office space to express breast milk, the place was not in compliance with the requirements of the Act. The office space was not free from public view or intrusion from others while (b) (6), (b) (7)(C) was using the office to express breast milk. The owner, managers and other employees walked in the office space while (b) (6), (b) (7)(C) was expressing breast milk (B-8 Exhibits). The intrusions occurred despite the "private office in use" sign posted. The office also had a big window through which other employees could see the nursing mothers expressing milk (B-8 and B-9 Exhibits). The office space did not have any blinds (B-7, B-8, and B-9 Exhibits) and therefore was not shielded from view of other employees. The blinds were only installed a few days prior to WHI (b) (6), (b) (7)(C) initial visit to the employer's establishment (B-9 Exhibits). Managers also made (b) (6), (b) (7)(C) wait until they were done with the office. This forced (b) (6), (b) (7)(C) to use the bathroom in a neighboring restaurant in order to express (b) (6), (b) (7)(C) breast milk. This was a direct denial of access to the office space to express breast milk.

(b) (6), (b) (7)(C): Although managers initially allowed (b) (6), (b) (7)(C) to use the office to express breast milk, the negative comments and attitude from the managers created a hostile environment against the use of the office space to express breast milk (B-9 Exhibits). Managers made negative comments about pumping breast milk, and showed their irritation every time the office space was requested (B-9 Exhibits). (b) (6), (b) (7)(C) eventually caved into the hostile environment and decided to utilize (b) (6), (b) (7)(C) vehicle as a space to pump breast milk (B-9 Exhibits). The office also had a big window through which other employees could see the nursing mothers expressing milk (B-8 and B-9 Exhibits). The blinds were only installed a few days prior to WHI (b) (6), (b) (7)(C) initial visit to the employer's establishment (B-9 Exhibits). The office space did not have any blinds while (b) (6), (b) (7)(C) was using it to express milk (B-7, B-8, and B-9 Exhibits) and therefore was not shielded from view of other employees.

Section 11: Record keeping violations were not (b) (7)(E) in the investigation period.

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Section 12: Child labor was (b) (7)(E) in the investigative period at Paula's Pancake House. However, no violations (b) (7)(E). One 14-year-old was found to be employed on Saturdays, outside of school hours (C-1 Exhibit). Two employees over the age of 16 were also working at the company (C-1 Exhibit). All underage employees worked as busboys and did not work in the kitchen at all (C-1 Exhibit). Other employees also corroborated that fact the employees were only cleaning tables and bringing out drinks (B-8 Exhibits).

Child labor was also (b) (7)(E) on the Belgian Café. However, no violations (b) (7)(E). The minors were strictly employed as dishwashers and did not perform any of the hazardous occupation orders (HOs) (B-3 Exhibits).

Section 15(a)(3): Retaliation against the nursing mothers who were requesting break time to express milk as well as the office space to express milk was (b) (7)(E) in the investigation period. Per Section 15(a)(3), it is unlawful to “discriminate against any employee because such employee (b) (7)(E) . . . related to [the FLSA].” Field Operations Handbook 59v00(e)(5)(b) also states that “most courts have ruled that internal complaints to an employer are also protected.” Here, the nursing mothers were subjected to retaliatory action for requesting break time and adequate space to express breast milk as required by the Act. The specific circumstances of the violations to each employee are explained below:

(b) (6), (b) (7)(C) and (b) (6), (b) (7)(C): The employer's retaliatory actions against (b) (6), (b) (7)(C) also had a chilling effect on the other nursing mothers who were working for the employer. (b) (6), (b) (7)(C) (B-1 and B-9 Exhibits) and (b) (6), (b) (7)(C) (B-2 and B-9 Exhibits) were all fearful of retaliation for exercising their right to express milk during their shifts. Nevertheless, such retaliatory actions did not result in any economic damages (objectively verifiable monetary loss).

(b) (6), (b) (7)(C) was not subject to any retaliatory actions from management. The fact that (b) (6), (b) (7)(C) did not requested transfer to another branch or did not want to take additional breaks beyond (b) (6), (b) (7)(C) lunch break to express milk may have been seen favorable by the employer. Also, (b) (6), (b) (7)(C) the manager at the Belgian Café, was more supportive of the nursing mother and allowed (b) (6), (b) (7)(C) to take additional minutes during (b) (6), (b) (7)(C) lunch break to finish pumping breast milk (B-4 Exhibits). The fact that (b) (6), (b) (7)(C) did not insist on actually using an adequate space as well as additional pump breaks may explain different treatment in comparison to (b) (6), (b) (7)(C).

(b) (6), (b) (7)(C) change in work site did not have negative impact on (b) (6), (b) (7)(C) employment with the firm. However, (b) (6), (b) (7)(C) transfer to Paula's Pancake House from The Belgian Cafe may have been triggered by the fact that (b) (6), (b) (7)(C) was adamant about using the office as an

adequate space to express milk (B-4 and B-8 Exhibits). (b) (6), (b) (7)(C) was subjected to more retaliatory action due to (b) (6), (b) (7)(C) persistence in standing up for (b) (6), (b) (7)(C) right to pump breaks (B-8 Exhibits). The employer, Mr. Charles Greenwald, conceded that he reassigned (b) (6), (b) (7)(C) to the counter section and that he moved (b) (6), (b) (7)(C) to a later shift. He gave the following reasons for the change (C-2 Exhibits):

(b) (6), (b) (7)(C) “was very late one day citing to domestic problems with the baby and use of (b) (6), (b) (7)(C) boyfriend's car”

(b) (6), (b) (7)(C) boyfriend would visit the restaurant with the baby

(b) (6), (b) (7)(C) would take 3 to 4 breaks per shift

Reassignment to the counter section, a slower section, was to minimize impact on customer service during (b) (6), (b) (7)(C) pump breaks.

Reassignment to a later shift was to help (b) (6), (b) (7)(C) to arrive on time. Moreover, there are more waitresses working in the later shift and it is easier to find another waitress to cover during (b) (6), (b) (7)(C) pump breaks.

(b) (6), (b) (7)(C) was a “slower waitress”

However, interview statements contradicted the employer's statement regarding (b) (6), (b) (7)(C) reassignment to the counter section as well as a later shift

- (b) (6), (b) (7)(C) was only late on one occasion. (b) (6), (b) (7)(C) time records show that (b) (6), (b) (7)(C) was rather punctual (B-8 and D-4 Exhibits)
- (b) (6), (b) (7)(C) boyfriend only brought the child to the restaurant to visit only once. (b) (6), (b) (7)(C) stopped the practice once management asked (b) (6), (b) (7)(C) not to bring the child to work again (B-8 Exhibits)
- (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) only took a maximum of two breaks per shift. One of the pump breaks was taken concurrently with the lunch break (B-8 Exhibits)

It is common knowledge among the waitresses that the counter section is the slowest, and, therefore, does not provide the same opportunity to earn tips as the other sections (B-2, B-8, and B-9 Exhibits). (b) (6), (b) (7)(C) former hostess manager also stated that (b) (6), (b) (7)(C) suspected that (b) (6), (b) (7)(C) reassignment to the counter section was retaliatory (B-2 Exhibits). (b) (6), (b) (7)(C) was rather punctual according to (b) (6), (b) (7)(C) records (D-4 Exhibits). (b) (6), (b) (7)(C) was a good waitress according to a former hostess manager (B-2 Exhibit).

Records show that (b) (6), (b) (7)(C) was punctual and that the other nursing mother's interview statements (B-1, B-2, B-7, B-8, and B-9 Exhibits) corroborate a retaliatory act by the employer rather than a reasonable accommodation. Furthermore, (b) (6), (b) (7)(C) statement and time records show that (b) (6), (b) (7)(C) average hours worked was lower after (b) (6), (b) (7)(C) reassignment in comparison to before (b) (6), (b) (7)(C) reassignment (A-1, B-8, and D-4 Exhibits). Section 15(b) states that “any employer who violates the provisions of section 15(a)(3) of this title shall be liable for such legal or equitable relief.” Because the investigation

concluded that an equitable relief was necessary, it was computed in the following manner:

(b) (7)(E)

[REDACTED]

Total lost wages (equitable relief) to 1 employee: 333.20 (A-1 Exhibits for complete computation sheet)

(b) (6), (b) (7)(C) Although **(b) (6), (b) (7)(C)** statement substantiate that the employee left due to the hostile environment, it is unclear whether **(b) (6), (b) (7)(C)** found a new job or had any economic damages. Several attempts were made to contact **(b) (6), (b) (7)(C)**. Although **(b) (6), (b) (7)(C)** responded to some of the contacts, she ultimately failed to respond and provide the evidence necessary to compute any equitable relief (B-7 Exhibits).

(b) (6), (b) (7)(C) was also the subject of retaliatory action. After **(b) (6), (b) (7)(C)** decided to avoid the hassle of using the office space in the restaurant, **(b) (6), (b) (7)(C)** decided to pump in **(b) (6), (b) (7)(C)** own car (B-9 Exhibit). **(b) (6), (b) (7)(C)** was parking **(b) (6), (b) (7)(C)** car in the parking lot located in the back of the restaurant, where it was more private than the street to express milk (B-9 Exhibit). **(b) (6), (b) (7)(C)** directly told **(b) (6), (b) (7)(C)** not to park in the rear parking lot because it was only for the managers and openers (B-9 Exhibit). Due to such retaliatory action, **(b) (6), (b) (7)(C)** was forced to express milk in **(b) (6), (b) (7)(C)** car, parked in a public area, and under a much hotter temperature (B-9 Exhibit). **(b) (6), (b) (7)(C)** situation only changed when the restaurant next door allowed **(b) (6), (b) (7)(C)** to use the bathroom to express milk (B-9 Exhibit). **(b) (6), (b) (7)(C)** later noticed that non-manager and non-openers were parking in the rear parking lot while **(b) (6), (b) (7)(C)** was expressly prohibited from doing the same (B-9 Exhibit).

Disposition

A final conference was held at the ER's establishment on 11/01/2016 with Mr. Daniel J. Greenwald (Director of Operations), WHI (b) (6), (b) (7)(C), and WHI (b) (6), (b) (7)(C). Coverage was reiterated and Mr. Greenwald acknowledged the WHD's authority to investigate the company.

WHI (b) (6), (b) (7)(C) explained the findings in detail, and made the ER aware that the company was: (1) failing to provide sufficient break time for nursing mothers to express breast milk, (2) failing to provide adequate space to nursing mothers to express milk, and (3) retaliating against EEs who were trying to exercise their rights under the FLSA.

Mr. Greenwald stated that he was not aware that his managers were failing to comply with the provisions of Section 7(r) of the FLSA. He stated that the employees never communicated the problems to him. WHI (b) (6), (b) (7)(C) explained that the retaliation may have caused a chilling effect, which prevented employees from addressing the issue directly with Mr. Greenwald.

WHI (b) (6), (b) (7)(C) also explained that there was some evidence of intimidation of EEs in regards to the meal deduction program. Although it did not lead to a BW liability, WHI advised Mr. Greenwald that he should allow his EEs to freely choose whether they want to participate in the program or not. WHI (b) (6), (b) (7)(C) also advised Mr. Greenwald that State and Local laws may also be applicable to his business.


Ultimately, Mr. Greenwald agreed to comply with the provisions of Section 7(r) of the FLSA by refraining from retaliating against the EEs, by allowing sufficient break time and adequate space for nursing mothers to express milk, and by providing more training to his management staff. Mr. Greenwald also agreed to an Enhanced Compliance Agreement with the U.S. Department of Labor (D-8 Exhibits), which outlines the plan of compliance in detail.

Payment Agreement: Mr. Daniel Greenwald argued that the change of schedule did not negatively impact (b) (6), (b) (7)(C) because (b) (6), (b) (7)(C) actually got more hours in some of the weeks. He also argued that his business has some fluctuation and requires reduction in schedule depending on the season. WHI (b) (6), (b) (7)(C) explained that the evidence shows that the reductions in schedule occurred immediately after (b) (6), (b) (7)(C) had issues with management. The pay periods showed that (b) (6), (b) (7)(C) had a steady schedule prior to the retaliatory actions, and clearly had an overall reduction in schedule. Mr. Greenwald ultimately agreed to pay backwages and liquidated damages as computed in one lump sum payment. Mr. Greenwald also agreed to pay the amount directly to the employee. He also agreed to pay the amount by 11/30/2016. WH-58 will not be used.


(b) (6), (b) (7)(C) was informed about the conclusion of the investigation on 11/03/2016 over a phone call. (b) (6), (b) (7)(C) understood that the violations were (b) (7)(E). (b) (6), (b) (7)(C) also understood that (b) (6), (b) (7)(C) was due backwages and liquidated damages and that the employer would make payments directly to (b) (6), (b) (7)(C). WHI (b) (6), (b) (7)(C) further informed (b) (6), (b) (7)(C) of (b) (6), (b) (7)(C) protections against

retaliation.

(b) (7)(E)



Lastly, it is recommended that the case be closed administratively (b) (7)(E)



Publications provided: Handy Reference Guide, Fair Labor Standards Act, 29 CFR §778 (OT Compensation), §516 (Records to be kept by employers), §785 (Hours Worked), WH-1330 (Child Labor Bulletin), Federal Registrar Vol. 75, No. 244 p. 80073, and Factsheets 28A, 44, and 77A were provide for future reference.

(b) (6), (b) (7)(C)

November 03, 2016

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1777227 Originating District: West Covina District Office
 Local Filing Number: 2016-186-07852 Investigating District: West Covina District Office
 WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
 Registration Date: 11/18/2015
 Assignment Date: 11/18/2015

Employer Information

Trade Name: Benefit Cosmetics LLC	Legal Name: Benefit Cosmetics
Address: Macy's Department Store	EIN: 94-3333930
111 Plaza Drive	County: Los Angeles
475 Sansome St SF, CA	NAICS Code: 446120
West Covina, CA 91790	No. Of Employees: (b) (6)

Investigation Information

Period Investigated From: 05/01/2015	BNPI:
To: 12/15/2015	Reinvestigation: <input type="checkbox"/>
Investigation Type: (b) (7)(E)	Recurring Violation: <input type="checkbox"/>
Investigation Tool: Full Investigation	Future Compliance Agreed: <input checked="" type="checkbox"/>
Compliance Status: Agree to Comply	Involved in AG: <input type="checkbox"/>

Recommended Action:

BWFS: <input type="checkbox"/>	RO/NO Review: <input type="checkbox"/>
CMP: <input type="checkbox"/>	Follow Up Investigation: <input type="checkbox"/>
Litigation: <input type="checkbox"/>	Other Action: <input type="checkbox"/>
Civil Action: <input type="checkbox"/>	Denial of Future Certificate: <input type="checkbox"/>
Criminal Action: <input type="checkbox"/>	BW Payment Deadline: <input type="checkbox"/>
Submit For Opinion: <input type="checkbox"/>	Trailer forms attached: <input type="checkbox"/>

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	2	\$0.00	\$0.00	\$0.00	\$0.00	

Total Violations Under FLSNM:	4		\$0.00
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WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

57Hrs3(s)(1)(A) Cov. Full Inv. (b) (6) (b) (7)(E) (b) (6), (b) (7)(E) was not prov. adeqt. space to express milk & retaliated by Macy's. IC held on 12/15/15 w/HR Dir Jennifer Sparks & Julie Steinleitner, Reg Sales Mgs. ER achk viol & lack of guid by ER. (b) (7)(E) for 2 EE"s. FC held 12/15 w/follow up 1/11. ER ATC & has rectify by prov written assur of actions implemented throughout all sites. ER has remedied all vios & agreed to comm/Macy's revise leave policy & comm to qualified EEs ret from leave. HRG, FS#44,77A,73,FLSNA

WHI Signature: _____ Date: 01/27/2016

Reviewed By: _____ Date: _____

dba: Benefit Cosmetics
225 Bush Street 20th Floor
San Francisco, CA 94104
Tel: (415) 781-8153
Fax: (415) 781-3930
Website: <https://www.benefitcosmetics.com>

Local Filing #: 2016-186-07852
EIN: 94-33339302

FLSNM Narrative Report

Reason for Investigation:

This investigation was initiated (b) (7)(E) (b) (6), (b) (7)(C)
(b) (7)(E) employer worksite failed to provide an adequate place shielded from view and free from intrusion from co-workers and the public to express breast milk under the Break Time for Nursing Mother's Law (FLSNM). In addition (b) (6), (b) (7)(E) although (b) (6), (b) (7)(C) direct employer was receptive to the needs of (b) (6), (b) (7)(C) breaks, (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) colleague (the 2nd nursing mother at this site), felt retaliated by West Covina's Macy's management for requesting a private space to express their milk (see exhibit B.2-B.2.a).

FLSNM Coverage:

Subject firm is a manufacture of cosmetics and perfumes founded in 1976 under their own brand. Merchandise is sold in over 30 countries and online catalog and retail department stores around the world. Benefit Cosmetics has made a name for itself by creating high-quality products that offer solutions with a sense of humor, for all skin care, cosmetic products, and performs. Benefit Cosmetic is the beauty queen of products of creating an easy-to-use "fake its & fix its" flawless face (see exhibit D.5.a). The company's headquartered are in San Francisco, California and they are a wholly owned subsidiary to LVMH Moet Hennessy-Louis Vuitton as of Sept 14, 1999. Parent headquarter address is 19 East 57th Street, New York, NY 10022 (see exhibit C.1).

Benefit Cosmetics, LLC (hereinafter the ER) a California State Limited Liability Corporation filed on September 14, 1999 (see Exhibit C.3). This is a multi-unit enterprise located within the boundaries of the West Covina District Offices. The employer operates in more than 2000 counters of department stores, lounges, or boutiques as identified in their website (see exhibit D.5.c). Corporate officers include, Jean-Andre Rougeot, Chief Executive Officer, Alfred Stillman, General Manager, America, Christophe Le Boteff, Chief Financial Officer, and Corey

Yribarren, Senior Vice President, Human Resource (see exhibit C.1).

Benefit Cosmetics is located inside the Macy's West Covina Plaza located at 111 Plaza Drive West Covina, CA 91790. This site is identified as a 'Browbar Lounge' under the management of Mrs. Julie Steinletner, Regional Sales Manager Southwest and Mrs. Christin Pat, Benefit Store Manager. Communication for this investigation was held with Mrs. Jennifer Baxter, Director of Human Resource and Mrs. Jennifer Sparks, Human Resource Generalist.

Mrs. Pat is in charge of running the day-to-day operations of the West Covina site with Ms. Baxter handling all human resource matters for the corporation. Mrs. Baxter oversees all employee relations matters, hires and fires employees, and is in charge of decisions pertaining to employment practices throughout the United States. Mrs. Baxter is the 3(d) employer under the FLSA.

The company grosses well over \$500,000 per year and has thousands of employees engaged in interstate commerce because they accept and run credit cards as well as handle goods that have been shipped across state lines. This was confirmed by Mrs. Baxter via writing, therefore all employees are covered under §3(s)(1)(a) of the FLSA (see exhibit C.1).

Since there are more than 50 employees at the enterprise level, the coverage includes §207(r); the Nursing Mothers provision of the FLSA.

Period of Investigation: 5/1/2015-12/15/2015

This was a full investigation of the two employees employed at the Benefit Cosmetics counter inside the West Covina mall, under the FLSA provisions of the "Break Time for Nursing Mother's Law". One employee was covered from May 2015 (see exhibit B.2.b), and the second employee covered September 2015 (see exhibit B.1).

MODO:

This is a multi-unit enterprise located within the boundaries of the West Covina District Office. The firm is headquartered out of San Francisco, California. (b) (7)(E)

The San Francisco District Office is the MODO for the ER (b) (7)(E)

(b) (7)(E)

Joint Employment:

To determine whether a joint employment relationship exists between Benefit employees and Macy's Department Store the "economic reality" test of the relationship was examine. No one factor is controlling in making a determination of joint employment. The evidence needed in each case is different. The factors to consider in determining "economic reality" are:

1. The extent to which the work performed is an integral part of the employer's business

Benefit employees employed as Eyebrow Technicians provide a unique service that is not offered by other cosmetic brands at this store. Yet, the services and products do not uphold the image of the Macy's brand. Macy's is one of the largest retail merchandise that expands beyond the sale of cosmetics. Macy's sells clothing, furniture, and home goods items throughout their department and an array of brand names. The services and brand of Benefit do not support an employment relationship with Macy's.

2. Whether the worker's managerial skills affect his or her opportunity for profit and loss.

All hiring practices are determined by Benefit Headquarters in San Francisco that handles the hiring and firing of the employees. The degree of supervision exerted by Macy's employees over Benefit employees presented weak evidence of a joint employment relationship. On occasion, Macy's managers will page Benefit employees over the intercom or speak with them directly to request assistants. However, in most instances, Macy's employees have little interaction with the Benefit employees. The Macy's managers performed the function of unlocking the store, but did not schedule start and stop times. The aforementioned factors disaffirm the joint employment relationship.

3. The relative investments in facilities and equipment by the worker and the employer.

Benefit's counter are located inside the cosmetic department of the Macy's department store and for the benefit and use of Macy's customers. The cosmetic items sold in this counter include perfumes, make up, and skin care items which can be purchase via credit or cash. All sales are overseen by Macy's and the employees utilize the credit card machines owned by the department store. Customers are able to charge transactions from this counter onto their Macy's account. This evidence supports an employment relationship with Macy's as they profit from sales and services generated from this brand.

4. The worker's skill and initiative.

The workers were employed by Benefit and hired as Eyebrow Technician or Specialist (see exhibit B.1 & B.2). These services required a specialized training offered by the employer for the services that are offered in the eyebrow counter. Macy's does not meet the definition of joint employer in this regard.

5. The permanency of the worker's relationship with the employer. _____

The degree of permanency of the working relationship between Benefit employees and Macy's moderately indicates joint employment. Employees work exclusively at this location and department store. The employer reported that two employees have been employed at the West Covina Macy's location for the past two years in the letter addressed to WHI (b) (6), (b) (7)(C) on 1/8/2016 and 12/4/2015 (see exhibits C.1. Answer #4 & D.3.b Answer#4. & D.3.b Answer #4).

6. The nature and degree of control by the employer

The evidence collected regarding the nature and degree of control indicates joint employment between Macy's and Benefit workers. The following factors supported a joint employment relationship. Benefit supervisors direct the vast majority of the day-to-day work. In addition, they are responsible of deciding which stores their employees will work at, whether it at a Macy's Department store, or a different location.

Although, Macy's supervisors do not directly instruct Benefit workers about which hours to work on a daily basis, Macy's does control certain aspects of the employees work conditions while employed at this site.

Benefit employees are required to provide advance notice and facilitate communicate with Kate, Macy's Store Manager and Melson, Human Resource Manager in order to take lactation break. Verbal guidance was related to each employee by ER's management team upon notified them of their need to express milk during their work hours. Macy's has taken sole control over the handling of space designated for Nursing Mothers at this site and the procedures to follow when requesting breaks for these two employees (see exhibit B.1 and B.2).

Therefore, in balancing all factors, WHI (b) (6), (b) (7)(C) determined that a definite joint employment relationship between Benefit Cosmetics and Macy's exists. This relationship does not completely disassociate Macy's from control of Benefit employees employed at this site.

EXEMPTIONS

The two employees employed at Benefit Cosmetic counter at the West Covina Macy's branch are paid on an hourly basis and classified as Full Time-Non Exempt employees (see exhibit C.1-C.1.a). No exemptions were claimed for employees at this branch location. According to (b) (6), (b) (7)(C) all brow technicians and eyebrow specialist are paid

by the hour.

The investigation was limited to the West Covina branch location, therefore exemptions were not explored for any other location.

STATUS OF COMPLIANCE

The investigation was initiated (b) (7)(E)

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) addressed specific issues that the ER jobsite failed to provide her with an adequate space shielded from view and free from intrusion to express breast milk. (b) (6), (b) (7)(C) wanted to make sure the ER was in compliance with all of the FLSNM regulations and claimed that Macy's staff treated the two non-exempt employee covered by §207(r) unfairly for requesting a space to express their milk. Finally, (b) (6), (b) (7)(C) claimed that the treatment by the Macy's staff and lack of private spaces resulted in one employee resigning from (b) (6), (b) (7)(C) position and triggered (b) (6), (b) (7)(C) to take time off from work. (b) (6), (b) (7)(C) has authorized the WHD to use (b) (6), (b) (7)(C) name in negotiation with the employer in writing (see exhibit B.2.c).

The initial conference was held on December 15, 2015 at West Covina's Macy's. Representing the ER was (b) (6), (b) (7)(C), Director of Human Resource for Benefit Cosmetics, Mrs. Julie Steinleitner, Regional Sales Manager, and Mrs. Christin Pat, Retail Account Manager. (b) (6), (b) (7)(C) provided requested information requested in the initial conference letter (see exhibit D.2.a). (b) (6), (b) (7)(C) did not dispute enterprise coverage and claimed that active employees are also protected under the statues of the FLSNM. The ER does not have a written policy for nursing mothers, and verbal notices are provided to the employees by direct supervisors or the human resource management staff.

(b) (6), (b) (7)(C) was aware of (b) (6), (b) (7)(C) concerns and launched an investigation on incidents that affected the two nursing mothers employed at this site. (b) (6), (b) (7)(C) provided copies of the emails that outline the issues of employees from this site and negligence from Macy's HR staff in the accommodations of their staff (see exhibits E.5.a-E.5.g).

Section 6: Compliance.

The firm pays all employees well above the applicable Federal MW, with a starting hourly rate of (b) (4) for corporate employees and (b) (4) for field employees. Two employees were employed at this location during the period of investigation and made at least (b) (4) as reflected on their paystubs (see exhibits E.1 & E.4). No

apparent violations were found under Section 6 of the FLSA.

Section 7: Compliance

During the initial conference the employer reported that the firm is in the practice of paying in accordance with State and Federal laws. Upon reviewing the information from the ER's payroll register and through employee interviews WHI (b) (6), (b) (7)(C) found that most of the employees are not working over 40 hours a week. Overtime compensation is reflected on the profile pay periods for hours worked after 8 in the day (see exhibit E.1. & E.4). No apparent violations were found under Section 7 of the FLSA.

Section 7(r) of the FLSNM - Break Time for Nursing Mothers Provisions:

Section 7(r)(1)(A): Compliance.

Requires an employer to provide a "reasonable break time for an employee to express breast milk for her nursing child for one (1) year after the child's birth each time such employee has need to express the milk."

The ER provided "reasonable break time" to the two non-exempt employee covered by §207(r). These employees were informed that they had the right to express their milk by their immediate supervisors returning from maternity leave. The employees were not restricted to take breaks during their scheduled breaks or denied permission to take additional breaks as needed. Finally, lactation breaks are paid by the employer and can freely be taken at the discretion of each employee's need.

Section 7(r)(1)(B): Violation.

Requires an employer to provide a "place other than a bathroom that is shielded from view and free from intrusions from coworkers and the public, which may be used by an employee to express breast milk."

Prior to the initial conference, (b) (6), (b) (7)(C) provided pictures taken of the rooms designated by HR Macy's staff for lactation used (see exhibit E.8-E.8.g). The two employees (b) (7)(E) Macy's did not have a designated room shielded from view and free from intrusion from coworkers and the public. These employees were regularly sent to express their milk to the West Covina family room on the opposite side of the mall (see exhibit E.8.g), Macy's employee break room (see exhibit E.8.b), Macy's training room (see exhibit E.8.c), Macy's women's dressing rooms, and or temporary empty offices that were not free from intrusion (see exhibit E.8.-E.8.a). None of the

aforementioned places were completely free from intrusions or shielded from view as declared by employees (see exhibit B.1 & B.2).

A tour of the establishment revealed that the employees relied on the guidance from Macy's HR staff. (b) (6), (b) (7)(E) (b) (7)(E) Benefit failed to designate a space to express their milk and relied on the guidance from Macy's staff including, Kate, General Manager and numerous human resource staff. Each employee was required to communicate with Macy's staff to obtain guidance on available rooms for use. Employees alleged that only one room located in the Human Resource office remained temporary empty yet, was not free from intrusions from the coworkers.

(b) (7)(E) (b) (6), (b) (7)(C) (b) (7)(E) during the initial conference. (b) (6), (b) (7)(C) (b) (7)(E) incidents brought to (b) (6), (b) (7)(C) attentional initiated an investigation that followed up with a corrective action plan and written notice to each employee (see exhibit E.5.c & E.6, E.7).

Section 11: Compliance.

Upon reviewing the information from the ER's company records and through employee interviews WHI (b) (6), (b) (7)(C) found that the ER is in compliance with the recordkeeping regulations of the FLSA. The employer had a copy of the FLSA and FMLA poster in the employee break room at Macy's.

Section 12: Compliance.

No evidence was found that the ER employed any minors during the period of investigation. No apparent violations were found under Section 12 of the FLSA.

Section 15(a)(3): Violation

Benefit Cosmetics has a retaliation policy that it relates to its employees that reads, "Benefit Cosmetics will not tolerate any retaliation against employees for making a complaint about harassment or discrimination for cooperating and participating in a harassment or discrimination investigation or proceeding" (see exhibit D.3. Although the firm outlines, their policy on retaliation two employees employed at the West Covina Macy's experience adverse actions upon exercising their right under Section 7(r).

The employees felt "discriminated" on a regular basis at their worksite for requesting a private room to express their milk. Employees claimed that numerous individuals including the Macy's General Managers, Human Resource

Manager, and other staff failed to comply with legal requirements. Although these employees were not directly hired by Macy's they claimed that their employer did not facilitate the coordination with Macy's in advance triggering the hostile work environment at the jobsite.

Both employees claimed that the management at Macy's made regular rude verbal comments about their need to express milk and inconvenienced of this request (see exhibit B.1 & B.2). In numerous occasions these employees were denied a room and asked to return at a later time (see exhibit E.5.a & E.5.b). The employees felt that their employer failed to arrange accommodations upon returning to work and directed them to handle all issues with Macy's staff. The employees (b) (7)(E) they were regularly harassed and neglected in their request.

(b) (6), (b) (7)(C) (b) (7)(E) on 10/16/15 a Macy's LP manager walked into during (b) (6), (b) (7)(C) lactation break and engage in a conversation with (b) (6), (b) (7)(C) while (b) (6), (b) (7)(C) was exposed (see exhibit B.2). The room was designated by the Macy's staff as a space secure from intrusion with a lock and a "Do Not Disturb" sign, nevertheless was accessed by a member of the management team (see exhibit E.8.a). (b) (6), (b) (7)(C) said (b) (6), (b) (7)(C) felt embarrassed and notified (b) (6), (b) (7)(C) supervisors. (b) (6), (b) (7)(C) ER acknowledged the incident and offered (b) (6), (b) (7)(C) the opportunity to take personal time off. Another employee claimed to have experience ongoing harassment by Macy's staff and contributed to (b) (6), (b) (7)(C) decision to resign from (b) (6), (b) (7)(C) employment at this jobsite (see exhibit B.1). Finally, (b) (6), (b) (7)(C) confirmed that on (b) (6), (b) (7)(C) last weekend of employment, Macy's staffs were unable to accommodate a private room for each person and directed both nursing mothers to share a room to express their milk (see exhibit E.5.b). This employee notified (b) (6), (b) (7)(C) ER of the decision to resign effective 11/6/15 based on (b) (6), (b) (7)(C) challenges at the worksite. On 10/28/15 Ms. Sparks, HR Generalist followed up with an email to this employee assuring that the ER would address (b) (6), (b) (7)(C) concerns and assist in resolving the workplace concerns (see exhibit E.7.b).

(b) (7)(E) during the course of the investigation. The employer and the employees' evidence, confirms adverse actions against employees for requesting time to express milk from Macy's employees as a result of ER's failure to facilitate accommodations in advance and require employees to engage in communication with Macy's staff.

DISPOSITION

A preliminary final conference of potential violations was also related to (b) (6), (b) (7)(C), Director of Human Resource, Mrs. Julie Steinleitner, Regional Sales Managers, Ms. Christine Pat, Retail Account Manager at the end of the initial conference. (b) (6), (b) (7)(C) was also invited to meet with Benefit's Management team and discuss corrective action plans to (b) (6), (b) (7)(E) (b) (6), (b) (7)(C) agreed to provide a written corrective action plan based on investigative findings and recommendations. During the FC, WHI (b) (6), (b) (7)(C) explained to the ER how the firm is covered under the provisions of the FLSA and FLSNM and discussed joint employment and

employer's responsibilities under the law. On 1/08/2016, WHI (b) (6), (b) (7)(C) received via email the written corrective action plan for this investigation, with a follow up call with Ms. Jennifer Sparks, HR Generalist at Benefit Cosmetics on 1/11/2016.

(b) (6), (b) (7)(C) understood the employment relationship involving Benefits Cosmetics and Macy's Department store and how they were jointly liable for compliance under the act. WHI (b) (6), (b) (7)(C) discussed the following the provisions of the FLSA, including 541 exemptions, minimum wage, overtime, recordkeeping, child labor, and coverage. The FLSA Nursing Mother provisions, including a detail discussion of the findings for this investigation and a copy of the FLSA § 7(r) (as amended by the Affordable Care Act, P.L. 111-148) was provided.

The ER was in violation under the break time for nursing mothers requirements and agreed the recommended changes in employment practices to ensure compliance. Violations under Section 15(a)(3) were also addressed during this meeting. The ER stated that they were unclear on some of the aspects of the law and obtained clarification during WHI (b) (6), (b) (7)(C) discussion and Wage and Hour Publications reviewed.

The employer agreed to future compliance and plans to make corporate changes. Primarily, they plan to enhance the communication with their retail partners and incorporate discussions with their employees upon returning from maternity leave (see exhibit D.3-D.3.a). The employer confirmed that Macy's was made aware of the intrusions of one of their employees and agreed to notify all staff of changes to the process for employees utilizing the room to avoid any intrusions in the future (see exhibit E.5.e). Finally, the ER plans will communicate with Macy's Management and the Human Resource Department, of ER's expectations on the treatment their employees to ensure compliance with the "strict no-retaliation policy". A discussion was had regarding one employee that opted to terminate (b) (6), (b) (7)(C) employment (see exhibit B.1). The ER said that they attempted to reach out to this employee on 10/28/15 and discuss a resolution to her concerns (see exhibit E.7.b). The ER claimed that this employee was provided the option to continue (b) (6), (b) (7)(C) employment, yet respected (b) (6), (b) (7)(C) decision to resign for time being. This EE communicated with WHI (b) (6), (b) (7)(C) and said that (b) (6), (b) (7)(C) resignation was a result of the hostile workplace and (b) (6), (b) (7)(C) desire to be with (b) (6), (b) (7)(C) baby during the 12 month lactation period (b) (6), (b) (7)(C) planned for (b) (6), (b) (7)(C). The employee did express (b) (6), (b) (7)(C) desire to return to (b) (6), (b) (7)(C) position, once (b) (6), (b) (7)(C) daughters turned 1 year of age (see exhibit B.1). The ER respected (b) (6), (b) (7)(C) desire to bond with (b) (6), (b) (7)(C) child and the need for leave, and agreed to re-hire (b) (6), (b) (7)(C) upon her desire to return to work. The ER agreed to revise the leave of absence process and communicate with employees returning from Maternity leave (see exhibit E.7.a). Benefit Cosmetic's management would then work with retail establishment staff to ensure suitable lactation space is identified and available prior to an employee returning from leave for each site.

(b) (6), (b) (7)(C) **Notification:**

(b) (6), (b) (7)(C) was notified of the results of the investigation after the initial conference. WHI (b) (6), (b) (7)(C) explained that (b) (6), (b) (7)(E) and that the ER had remedied the problem. WHI (b) (6), (b) (7)(C) explained to EE that the case would be submitted for conclusion upon ER's written plan of the corrective actions that they would take.

(b) (6), (b) (7)(C) was contacted on 1/11/16 to discuss actions taken by the employer. (b) (6), (b) (7)(C) was informed that the ER planned to follow up with (b) (6), (b) (7)(C) on a monthly basis to ensure communication is improved with (b) (6), (b) (7)(C) concerns.

Publications:

The following publications were provided to Ms. Jennifer Braxter on 12/14/2015 at the establishment: FLSA (WH 1318), HRG and Fact Sheets #28D, 44, 73, 77A, Frequently Asked Questions – Break Time for Nursing Mothers (printed from www.dol.gov/whd). On 1/11/16 the employer was provided with Break Time for Nursing Mothers Employee Rights Card, WH Publication 518 and a copy of the link to obtain additional publications to share with their partners <http://www.dol.gov/whd/publications>.

Recommendations:

Section 7(r)(1)(B) and Section 15(a)(3) violations found. The ER has now remedied the violations and has agreed to comply in the future with the FLSA, and FLSNM regulations. WHI (b) (6), (b) (7)(C) recommends that the file be concluded administratively with no further action.

(b) (6), (b) (7)(C), *Wage & Hour Investigator*
West Covina District Office
January 27, 2016

WHISARD Compliance Action Report

U.S. Department of Labor Wage and Hour Division

Case ID: 1784683 Originating District: Las Vegas District Office
Local Filing Number: 2016-280-01790 Investigating District: Las Vegas District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 02/22/2016
Assignment Date: 02/23/2016

Employer Information

Trade Name: Holiday Inn Express Legal Name: Minden Hotel LLC
Address: 1659 State Route 88 EIN: 26-2721552
County: Douglas
NAICS Code: 721110
Minden, NV89423 No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 12/19/2015 BNPI:
To: 03/09/2016 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

Total Violations Under FLSNM: 2 \$0.00

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

31.75 hrs. FLSA Limited Invest. Sect 3(s)(1)(a) Ent Cov applies to all EEs and front desk EEs are Ind Cov. Firm >500k yr. Exact Exemp applies to GM. (b) (7)(E) OT viols. (b) (7)(E) ER failed to provide a reasonable break and a functional space shielded from view as required under Section 7(r)(1)(a). (b) (7)(E) ER ATC. Unable to reach (b) (6) Contact letter mailed to (b) (6) on 5/31/16. Rec case closed with no further action.

WHI Signature: _____ Date: 06/03/2016

Reviewed By: _____ Date: _____

1784683

Minden Hotel LLC
DBA: Holiday Inn Express
1659 State Route 88
Tel: 775.782.7500
Fax: 775.265.1000

Contact: Debra S. Lang (General Manager)
Cell: 775.721.3680

EIN: 26-2721552

FLSA NURSING MOTHERS NARRATIVE REPORT

Coverage

Subject firm is a Franchise Hotel and Motel located in Minden, Nevada and provides services to the general public. Minden Hotel LLC DBA as Holiday Inn Express is a Limited Liability Corporation. The firm was incorporated in Nevada on April 24, 2008. Jaswinder Dhani has (b) (6) ownership of the subject firm (See Exhibits C-2a).

Minden Hotel LLC DBA as Holiday Inn Express currently has approximately (b) (6) employees. The firm's annual dollar volume (ADV) for 2013 was (b) (4), in 2014 was (b) (4) and in 2015 was (b) (4) and at least 2 employees handle goods that have crossed interstate lines (b) (4) (See Exhibit C-1a – C-1d). The employer affirms ADV exceeded \$500,000. All employees are covered under Section 3(s)(1)a of the Fair Labor Standards Act (FLSA) (See Exhibits C-2a – C-3f). Individual coverage applies to all front desk employees who swipe customer credit cards on a regular basis (See Exhibits B-3a).

Section 3d Employer: The 3(d) employers include Jaswinder Dhani (100% owner) and General Manager Debra S. Lang as they run the day to day operations of the firm and hire and fire employees.

Period and Type of Investigation: A limited investigation was conducted for the period December 19, 2015 through March 9, 2016.

MODO Contact: Subject firm has only one establishment in Minden, Nevada.

Exemptions

Overtime exemptions were tested to determine whether (b) (6), (b) (7)(C) is exempt from Break Time for Nursing Mothers under Section 7 of the Fair Labor Standards Act. Based on the employees' interview statement and the review of payroll records, it was determined that (b) (6), (b) (7)(C) is a nonexempt housekeeper for the firm and

does not perform any exempt duties and is paid hourly. As a result, (b) (6), (b) (7)(C) is found not exempt under 13(a) or 13(b) provisions. (b) (6), (b) (7)(C) is subject to Section 7 of the Fair Labor Standards Act and not exempt from Break Time for Nursing Mothers under Section 7(r) of the Fair Labor Standards Act (See Exhibits B-4a – B-4d and A-1c & A1j).

Status of Compliance

Reason for Investigation: The limited investigation was initiated by (b) (6), (b) (7)(C)

(b) (7)(E) the firm has made it difficult for (b) (6), (b) (7)(C) to express milk for (b) (6), (b) (7)(C) nursing child. In addition, (b) (6), (b) (7)(C) (b) (7)(E) the firm failed to provide (b) (6), (b) (7)(C) a room with a lock to breast feed (b) (6), (b) (7)(C) child. As a result, (b) (6), (b) (7)(C) was breastfeeding (b) (6), (b) (7)(C) child in the hotel lobby (See Exhibits B-4a – B-4d).

Prior History:

Case #	Reason for Violation	Period of Investigation	ATP/RTP
1734902	Firm paid OT after 80 hours	9/5/2012-9/1/2014	ATC/ATP

Section 7(r)(1)(A) Break Time for Nursing Mothers: Break Time for Nursing Mothers violation were found due to the firm not providing (b) (6), (b) (7)(C) a reasonable amount of break time for the employee to nurse and a functional space shielded from view and intrusion for nursing mothers to express and or nurse (b) (6), (b) (7)(C) child.

During an interview with (b) (6), (b) (7)(C) which took place on March 11, 2016, (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) had mention to Debra when (b) (6), (b) (7)(C) was hired that (b) (6), (b) (7)(C) was a nursing mother and that Debra had stated that they were ok with it. During the beginning of (b) (6), (b) (7)(C) employment, (b) (6), (b) (7)(C) stated that they would bring (b) (6), (b) (7)(C) child during (b) (6), (b) (7)(C) lunch break to the hotel so that (b) (6), (b) (7)(C) could nurse (b) (6), (b) (7)(C) (b) (7)(E) (b) (6), (b) (7)(C) asked Debra, (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) for a room to nurse and (b) (6), (b) (7)(C) was told that they didn't have a room for (b) (6), (b) (7)(C) to nurse. As a result, (b) (6), (b) (7)(C) was forced to nurse in the hotel lobby (See Exhibits B-4a – B-4d).

(b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) continued to nurse (b) (6), (b) (7)(C) child at the hotel lobby until mid-January of 2016 when (b) (6), (b) (7)(C) enrolled (b) (6), (b) (7)(C) at a day care center which is located next to the Holiday Inn Express. As a result, (b) (6), (b) (7)(C) then asked (b) (6), (b) (7)(C) if (b) (6), (b) (7)(C) could take (b) (6), (b) (7)(C) 15 minute breaks so that (b) (6), (b) (7)(C) could go next door and breast feed (b) (6), (b) (7)(C) child. (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) stated that "It was a waste of my time from finishing my rooms and a waste of (b) (6), (b) (7)(C) pay." As a result and because (b) (6), (b) (7)(C) didn't want to lose (b) (6), (b) (7)(C) job, (b) (6), (b) (7)(C) stated told (b) (6), (b) (7)(C) "OK" and (b) (6), (b) (7)(C) was unable to go next door and breast feed (b) (6), (b) (7)(C) child. (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) was unable to nurse until WHI (b) (6), (b) (7)(C) called the firm (See Exhibits B-4a – B-4d).

On February 25, 2016, WHI (b) (6), (b) (7)(C) called the firm and faxed over Fact Sheet #73 Break Time for Nursing

Mothers under the FLSA. During the phone conversation with the General Manager Debra S. Lang, she stated that the firm had only 1 nursing mother and that (b) (6), (b) (7)(C) child is in a day care. Mrs. Lang stated that she had asked (b) (6), (b) (7)(C) if (b) (6), (b) (7)(C) needed accommodations and that (b) (6), (b) (7)(C) had said no (See Case Diary).

During the Initial Conference which was held on March 9, 2016, Mrs. Lang stated to WHI (b) (6), (b) (7)(C) that prior to the February 25, 2016 phone call, Mrs. Lang stated that no employee had brought up to her attention that they are nursing mothers. Mrs. Lang then stated that to her knowledge, none of her managers were aware of any nursing mothers. In addition, Mrs. Lang stated that when (b) (6), (b) (7)(C) was hired, (b) (6), (b) (7)(C) never said (b) (6), (b) (7)(C) was a nursing mother (See Exhibit C-1a-C-1c).

Mrs. Lang stated that after the telephone discussion with WHI which took place on February 25, 2016, she sat down with (b) (6), (b) (7)(C) and asked (b) (6), (b) (7)(C) if (b) (6), (b) (7)(C) needed a place to nurse so that they could make arrangement for (b) (6), (b) (7)(C). Mrs. Lang stated that (b) (6), (b) (7)(C) requested that (b) (6), (b) (7)(C) be allowed to go next door to nurse at the day care. Mrs. Debra Lang stated that she approved it but because (b) (6), (b) (7)(C) was going to be leaving the property, (b) (6), (b) (7)(C) would have to clock out for that time (See Exhibit C-1c).

During the March 11, 2016 interview with (b) (6), (b) (7)(C) confirmed that (b) (7)(E) (b) (6), (b) (7)(C) General Manager Debra Lang brought (b) (6), (b) (7)(C) into the office to discuss the matter and allowed (b) (6), (b) (7)(C) to go next door to the day care so that she could nurse (b) (6), (b) (7)(C) child (See Exhibit B-4a – B-4d).

During the course of the investigation, WHI conducted employee interviews at the establishments. Employee interviews stated that they were aware that (b) (6), (b) (7)(C) was a nursing mother. When asked if the firm provided accommodation for nursing mothers, employee interviews either stated that the firm did not make any accommodations and a few stated that they weren't aware of it (See Exhibits B-1a – B-7d).

After careful review of the facts and employee interview statements, it was determined that the firm had enough information of (b) (6), (b) (7)(C) need to nurse and failed to provide the break time needed to nurse as required under the FLSA Section 7(r)(1)(A). WHI determined that (b) (6), (b) (7)(C) had expressed (b) (6), (b) (7)(C) need to nurse during the course of the employment to both Mrs. Lang and (b) (6), (b) (7)(C).

During the course of the investigation, employee interview statements (b) (7)(E) (b) (6), (b) (7)(C) was the owner of the firm (See Exhibits B-1a – B-7d). WHI on numerous occasions asked Mrs. Debra Lang for the relationship between (b) (6), (b) (7)(C) and the firm. Mrs. Lang never provided WHI with any clarification. In addition, (b) (6), (b) (7)(C) on (b) (6), (b) (7)(C) interview statement stated that (b) (6), (b) (7)(C) was an employee and that was not aware of (b) (6), (b) (7)(C) need as a nursing mother (See Exhibit B-3a – B-3c). During the final conference, Mrs. Debra Lang stated that (b) (6), (b) (7)(C) was indeed the wife of owner (b) (6), (b) (7)(C).

In addition, WHI also determined that the firm failed to provide a space other than a bathroom that is shielded from view and free from intrusion from coworkers and the public to be able an express (b) (6), (b) (7)(C) milk or nurse (b) (6), (b) (7)(C) child. During the Initial conference, General Manager Debra Lang had stated that she was not aware of any nursing mothers working at the firm (See Exhibit C-1a-C-1c). (b) (6), (b) (7)(C) stated that they would bring (b) (6), (b) (7)(C) child to

establishment during (b) (6), (b) (7)(C) lunch break so that (b) (6), (b) (7)(C) could nurse the child. (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) was forced to nurse (b) (6), (b) (7)(C) child in the lobby of the hotel and was not provided a private area (See Exhibits B-4a – B-4d). (b) (6), (b) (7)(C) stated that someone would bring the child to the establishment so that (b) (6), (b) (7)(C) could nurse (See Exhibits C-5a – B-5e). Other employee interviews also stated that they were aware that (b) (6), (b) (7)(C) had a child and was nursing (See Exhibits B-4a – B-7d).

Disposition:

A final conference was held telephonically on May 19, 2016 at the 1:00 pm from the Las Vegas District Office. Present for the final conference was the General Manager Debra S. Lang and WHI (b) (6), (b) (7)(C). WHI (b) (6), (b) (7)(C) explained enterprise and individual coverage and all applicable requirements under the Fair Labor Standards Act.

In regards to (b) (7)(E) the firm did not provide (b) (6), (b) (7)(C) reasonable break time to express milk, WHI explained to Mrs. Lang that it was determined that the firm had failed to provide (b) (6), (b) (7)(C) a reasonable break time for expressing milk. Mrs. Debra Lang stated that she didn't agree with the findings due to it being skewed to hearsay such as she said and (b) (6), (b) (7)(C) said. WHI explained to Mrs. Debra Lang that it was determined and employee interviews showed that the firm had enough information and knowledge of (b) (6), (b) (7)(C) needs as a nursing mother and should have provided a reasonable break time. WHI also explained to Mrs. that it was also determined that the firm had failed to provide (b) (6), (b) (7)(C) a place that is shielded from view and free from intrusion to nurse or extract (b) (6), (b) (7)(C) milk.

When asked why this happened, Mrs. Debra Lang then asked WHI on the firm's right to establish a policy. Should the firm ask all prospective employees at hiring if they are nursing mothers? WHI (b) (6), (b) (7)(C) explained to Mrs. Lang that WHI could not advise the firm on how to set up their nursing mother's policy but reminded Mrs. Lang that if the firm had enough information or that if an employee asked about break time for nursing mothers, the firm needs to make sure they are in compliance and provide the time and space for them to extract their milk or to nurse.

When asked if the firm agrees to comply, Mrs. Debra Lang stated that the firm would come into compliance and would offer nursing mothers the office used by WHI during initial conference for nursing. Mrs. Debra Lang then asked WHI about possible issues with privacy laws. WHI (b) (6), (b) (7)(C) explained to Mrs. Debra Lang that she would have to contact the designated agencies that handle privacy laws for guidance. Mrs. Debra Lang stated that she understood.

The employer was informed of the possibility of civil money penalties in this or in any subsequent investigation by the Wage and Hour Division of the Department of Labor. Employer was advised that he would be notified in writing any assessment of civil money penalties as a result of violations in this investigation.

Numerous attempts were made to contact (b) (6), (b) (7)(C) by telephone with no success. A contact letter was mailed to (b) (6), (b) (7)(C) on May 31, 2016 (See Case Diary and Exhibit D-11a).

Publications mailed out after initial conference: Publications mailed out after initial conference: : CFR Parts 516, 578, 580, 778, 541, 785, WH-1297, Fair Labor Standards Act (FLSA), FLSA poster, CL-101, Fact Sheets 21, 22, 23, 28, 28D, 44, 77A, 73, Handy Reference Guide and DOL website.

Recommendations:

- I. (b) (7)(E)
- II. I recommend this case be administratively concluded.

(b) (6), (b) (7)(C)

Wage & Hour Investigator
June 3, 2016

WHISARD Compliance Action Report

U.S. Department of Labor Wage and Hour Division

Case ID: 1791192 Originating District: San Diego District Office
Local Filing Number: 2016-315-06352 Investigating District: San Diego District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 05/04/2016
Assignment Date: 05/05/2016

Employer Information

Trade Name: BrightView Landscape Development, Inc. Legal Name: BrightView Landscape Development, Inc.
Address: 11555 Coley River Circle Ste A EIN: 95-1590418
County: Orange
NAICS Code: 561730
Fountain Valley, CA92708 No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 04/01/2016 BNPI:
To: 05/09/2016 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

38.50hrs, (b) (7)(E) case FLSA Nursing Mother -ER failed to provide adequate space to pump. Enterprise Cov established. EE is eligible - non-exempt Salaried EE. MODO =LADO. Est is office &yard. Viol found =Sec 7(r)(1)(B) inadequate space to pump -ER Placed responsibility to EE to coord breaks w/another EE/occupied same office space to pump. ER ATC & agree to remedy -use training room exclusively to pump for any future FLSANM EEs = (b) (6), (b) (7)(C) made whole, Told (b) (6), (b) (7)(C) of findings. Rec Case Admin Close

WHI Signature: _____ Date: 07/21/2016

Reviewed By: _____ Date: _____

FLSA NURSING MOTHER NARRATIVE REPORT

Local File No: 2016-315-06352

Case No: 1791192

Legal Name: BrightView Landscape Development, Inc. EIN: 95-1590418
DBA: BrightView Landscape Development, Inc. Contact: Sarah L. Powenski, Esq.
Address: 11555 Coley River Circle Ste. A Ph No: (484) 567-7221
Fountain Valley, CA 92708
Ph No: (714) 546-7975

COVERAGE

The subject firm is a landscaping development company with approximately (b) (4) employees (see exhibits C-1a, C-1b, and D-4a through D-4m). The firm is a California corporation formed on 04/11/1949 with Thomas Donnelly, as CEO and President (see exhibits C-1a, C-2e, C-2f, C-2u, and C-2y).

Enterprise coverage under Section 3(s)(1)(A) was established for the subject firm throughout the period of the limited investigation of 04/01/2016 through 05/09/2016. The subject firm employs administrative staff (accounts payable and accounts receivable representatives) whose duties include the use of the XEROX Copy Machine, Dell Computers and monitors, and Hewlett Packard Printers all made in China (see exhibit C-1d). Additionally, the ADV for this firm was (b) (4) in 2015, (b) (4) in 2014, and (b) (4) in 2013, well above \$500,000.00 per year (see exhibits C-1a and C-3ad).

3(d) employer: Vincent Germann, Senior Vice President, and Matilde L. Lavenant, Regional Office Manager, are the subject firm's 3(d)ERs under the FLSA as each has the ability to affect the work environment (see exhibits B-1 through B-7).

Employment Relationship / Misclassification of Independent Contractors: Not Applicable; No 1099 independent contractors found for subject firm (see exhibit C-1b).

MODO: The LADO is the MODO. The subject firm's corporate office is located at 24151 Ventura Blvd in Calabasas, CA 91302. The subject firm is located at 11555 Coley River Circle Ste. A in Fountain Valley, CA 92708 with its yard located at 1920 S. Yale Street in Santa Ana, CA 92706 (see exhibit C-1a). (b) (7)(F)

(b) (7)(E) (see exhibits D-1a through D-1e).

EXEMPTIONS: None claimed. (b) (6), (b) (7)(C) was a non-exempt salaried employee and is subject to Section 207 of the Act (see exhibits A-1, B-5d, and D-4k). (b) (6), (b) (7)(C) is therefore entitled to protection under the Nursing Mother provision of Section 207(r).

STATUS OF COMPLIANCE

History: A search in WHISARD indicated that this is the 1st FLSNM investigation for subject firm. However, subject firm has a history of prior investigations at other locations under other Acts (see exhibits D-1a through D-1e).

Reason for Investigation: This limited investigation (b) (7)(E) (b) (6), (b) (7)(C)

(b) (7)(E) the employer failed to provide adequate space to express breastmilk. (b) (6), (b) (7)(C) (b) (7)(E) (see exhibit D-2). (b) (6), (b) (7)(C) was a nursing mother who needed to express breastmilk for (b) (6), (b) (7)(C) child who was under the age of 1 year (date of birth 05/30/2015) (see exhibit B-5d).

(b) (6), (b) (7)(C) claimed that (b) (6), (b) (7)(C) had returned to work from maternity leave on 08/11/2015. From 08/11/2015 to 02/2016, the 3dER provided (b) (6), (b) (7)(C) with an adequate space to express (b) (6), (b) (7)(C) milk – a small private conference room. But due to company expansion, that space was being remodeled to become a 2 person workspace/office. So from 02/2016 to 03/2016, the 3dER placed (b) (6), (b) (7)(C) in another adequate space – a private office. However this space was soon to be remodeled to become cubical space. So from 04/2016 to 05/2016, the 3dER placed (b) (6), (b) (7)(C) in a shared office space with a female co-worker (non-nursing mother). The 3dER provided (b) (6), (b) (7)(C) with a Do Not Disturb sign and with a Japanese screen/partition (see exhibits B-2 through B-7, D-5a through D-5d, and D-6a through D-6l).

The 3dER told (b) (6), (b) (7)(C) to coordinate her breaks with the co-worker (i.e., a non-exempt salaried EE) so (b) (6), (b) (7)(C) could express (b) (6), (b) (7)(C) breastmilk in the co-worker's office when the co-worker is on (b) (6), (b) (7)(C) break. The 3dER had given "control" to (b) (6), (b) (7)(C) to determine the schedule and coordinate the breaks with the co-worker for usage of the shared office space for when (b) (6), (b) (7)(C) needed to express (b) (6), (b) (7)(C) breastmilk. The 3dER did not specifically tell (b) (6), (b) (7)(C) that if the coordination didn't work out to come see (b) (6), (b) (7)(C) because the 3dER assumed that (b) (6), (b) (7)(C) would do so if there was a problem, because (b) (6), (b) (7)(C) is a

grown adult and had spoken up previously on other occasions. The 3dER was not aware of any problems or concerns with this arrangement (see exhibits B-2 through B-7, D-5a through D-5d, and D-6a through D-6l).

After a few days, the coordination of their breaks became difficult and impractical, that (b) (6), (b) (7)(C) and the co-worker agreed between themselves that it would be ok for them both to occupy the same office space at the same time(s) when (b) (6), (b) (7)(C) needed to express (b) (6), (b) (7)(C) breastmilk. (b) (6), (b) (7)(C) would be seated behind the Japanese screen while expressing (b) (6), (b) (7)(C) breastmilk, while the co-worker worked at (b) (6), (b) (7)(C) workstation in the same office space at the same time(s). The 3dER was aware of this arrangement because (b) (6), (b) (7)(C) had witnessed it occurring. On one occasion, the 3dER, the co-worker, and (b) (6), (b) (7)(C) were all talking together in the office space while (b) (6), (b) (7)(C) was expressing (b) (6), (b) (7)(C) breastmilk behind the Japanese screen. The 3dER was not aware of this being a problem, because (b) (6), (b) (7)(C) never said anything to (b) (6), (b) (7)(C) about it (see exhibits B-2 through B-7, D-5a through D-5d, and D-6a through D-6l).

However, (b) (6), (b) (7)(C) was unhappy about the situation, wanting to be in a quiet space by (b) (6), (b) (7)(C) to express (b) (6), (b) (7)(C) breastmilk. But (b) (6), (b) (7)(C) adapted and did not voice any concern or request for other accommodations, because (b) (6), (b) (7)(C) thought (b) (6), (b) (7)(C) had no other options due to the remodeling of the establishment and felt uncomfortable to speak to the 3dER (see exhibits B-2 through B-7, D-5a through D-5d, and D-6a through D-6l).

For other reasons, (b) (6), (b) (7)(C) turned in (b) (6), (b) (7)(C) 2 weeks' notice to end (b) (6), (b) (7)(C) employment at the subject firm on 04/22/2016, with (b) (6), (b) (7)(C) last day as 05/02/2016. (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) wasn't owed any back pay and didn't want (b) (6), (b) (7)(C) position back, even if proper accommodations were made by the 3dER. (b) (6), (b) (7)(C) stated that there weren't any nursing mothers employed at the subject firm, but wanted any future nursing mother employees to have adequate location to express breastmilk at the subject firm (see exhibit B-5).

WHI (b) (6), (b) (7)(C) contacted (b) (6), (b) (7)(C) on 07/21/2016 and advised (b) (6), (b) (7)(C) via voicemail message of the case findings/violations.

Violations found: The employer failed to provide adequate space for the nursing mother.

On 05/10/2016 WHI (b) (6), (b) (7)(C) made an unannounced visit to the establishment, conducted the IC, interviewed employees, and toured the establishment, including the 3 locations/spaces the 3dER placed (b) (6), (b) (7)(C) to express (b) (6), (b) (7)(C) breastmilk.

Section 7(r)(1)(A) – Reasonable Break Time to Express Breastmilk: No violation found (see exhibits B-2 and B-5b).

Section 7(r)(1)(B) – A Place Other than a Bathroom, Shielded from View and Free from Intrusion to Express Breastmilk: Violation found. Based on interviews with (b) (6), (b) (7)(C), 3dER, and other employees, and viewing the office spaces, partition/screen, and the situation as a whole, it was determined that responsibility of compliancy was placed on (b) (6), (b) (7)(C) by the 3dER, to coordinate breaks with a co-worker for a shared office space to express (b) (6), (b) (7)(C) breastmilk, as needed. Instead, it was the 3dER's responsibility to place (b) (6), (b) (7)(C) in an adequate space that would be made available each time (b) (6), (b) (7)(C) had need to express breastmilk, as was done previously at two other spaces at the subject firm (see exhibits B-2 through B-7, C-1e, D-5a through D-5d, and D-6a through D-6l).

Section 12: No Child Labor violation found (see exhibits B-1, B-3, B-4, and C-1b).

Section 15(a)(3) – Retaliation: No Violation found (see exhibits B-1 through B-7).

DISPOSITION

On 07/21/2016, WHI (b) (6), (b) (7)(C) held a final conference via a conference call with Vincent Germann, Senior Vice President of the Fountain Valley location, Patricia White, Vice President Human Resources for BrightView Group, and Sarah L. Powenski, Vice President Associate General Counsel for BrightView Landscape Development, Inc.

WHI (b) (6), (b) (7)(C) discussed the 3dER's responsibilities under the FLSA Nursing Mother Provisions and the findings of the investigation as it related to (b) (6), (b) (7)(C). The 3dER agreed to comply and agreed to remedy. The 3dER stated that currently there are no nursing mothers employed at the subject firm. But in the future the 3dER will place the nursing mother employee in the training room (i.e., adequate with no windows, but with locked door, table, chair, electrical outlet) (see exhibits D-6i, D-6j, and D-6k) and have the trainees trained in the yard until the nursing mother is no longer nursing or by 1 year after the birth of the child, whichever comes first.

CMP and LD: N/A

Publications provided: FLSA, HRG, US DOL WHD Fact Sheets #28D, #44, #73, and #77a,

and US DOL WHD Frequently Asked Questions – Nursing Mothers

RECOMMENDATION: I recommend this case be administratively closed.

(b) (6), (b) (7)(C)

Wage & Hour Investigator

July 21, 2016

WHISARD Compliance Action Report

U.S. Department of Labor Wage and Hour Division

Case ID: 1791468 Originating District: Las Vegas District Office

Local Filing Number: 2016-280-01835 Investigating District: Las Vegas District Office

WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)

Registration Date: 05/09/2016

Assignment Date: 05/10/2016

Employer Information

Trade Name: Olive Garden Legal Name: Darden Restaurants, Inc.

Address: 6191 Centennial Center Blvd EIN: 59-1219168

County: Clark

NAICS Code: 722110

Las Vegas, NV89149 No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 02/01/2016 BNPI:

To: 05/08/2016 Reinvestigation: ☐

Investigation Type: (b) (7)(E) Recurring Violation: ☐

Investigation Tool: Limited Investigation Future Compliance Agreed: ☐

Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐

CMP: ☐ Follow Up Investigation: ☐

Litigation: ☐ Other Action: ☐

Civil Action: ☐ Denial of Future Certificate: ☐

Criminal Action: ☐ BW Payment Deadline: 07/01/2016

Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	1	1	\$20.00	\$20.00	\$0.00	\$0.00	

Total Violations Under FLSNM:	2		\$0.00
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WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	1	Unduplicated Employees Agreed:	1
Total Amount BWs Computed:	\$20.00	Total Amount BWs Agreed:	\$20.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

FLSNM. Ent coverage applies. nursing mothers (b) (7)(E) (b) (6), (d) child less than 1 yr old. EE denied break time and adequate space. ER ATC/ATP. \$20.00 due for expense incurred due to lack of space. Recommend case be closed administratively (b) (7)(E)

WHI Signature: _____ Date: 06/23/2016

Reviewed By: _____ Date: _____

GMRI, Inc.
DBA Olive Garden
6191 Centennial Center Blvd
LAS VEGAS, NV 89149
TEL. (702) 645-1557

EIN: 59-1219168

POINT OF CONTACT

Lisa Graening, Esq.
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FAIR LABOR STANDARDS NURSING MOTHERS NARRATIVE REPORT

COVERAGE

The subject firm is a restaurant chain specialized in Italian-American cuisine. The legal name is GMRI, Inc. which is a subsidiary of the parent company, Darden Restaurants, Inc. Darden Restaurants, Inc. is a publicly traded company. They operate under the following brands: Olive Garden, Red Lobster, Bahama Breeze, Seasons 52, Longhorn Steakhouse, The Capital Grille and Eddie V's. There are more than 1,500 locations in the US and Canada. The subject firm was incorporated in the state of Florida in March 1999. The corporate address is 1000 Darden Center Drive Orlando, FL 32837 (exhibit C-2).

The subject enterprise grossed (b) (4) in the last 9 months ending February 28, 2016 (exhibit C-1). At least two full time employees handle good that has moved in interstate commerce such as food service products and premium alcoholic beverages from Texas and Coca Cola products from Atlanta, GA (exhibit C-3). Enterprise coverage under the FLSA 3(s) (1)(A)(i)(ii) would be applicable because the ADV is above \$500,000. The employer has (b) (4) employees at this location (exhibit C-3). (b) (6), (b) (7)(C) is a covered nursing employee with a child under the age of 1. Therefore, 7(r) of the FLSA applies.

Michael Jefferson manages the daily operations of this location. Specifically, he is actively engaged in influencing the decision-making for the firm. All employees report to him. He can hire and fire and is responsible for business decisions (exhibit C-3). He acts directly in the interest of the employer in relation to an employee. Therefore, he meets the definition of an employer under section 3(d) of the FLSA (exhibit B-1-2).

This investigation is being limited to (b) (6), (b) (7)(C) only.

Period for this investigation is 2/1/2016 to 05/08/2016.

MODO is Orlando, FL. (b) (7)(E) (exhibit D-1).

EXEMPTIONS

Exemptions were not reviewed, limited to (b) (6), (b) (7)(C)

STATUS OF COMPLIANCE

History: The parent company has an extensive history found in WHISARD. There has only been one other FLSNM case conducted by the Oklahoma DO. No violations were found. Case ID: 1774278. However, no history was found at this particular location.

Reason for investigation: The investigation was initiated from (b) (7)(E) (b) (6), (b) (7)(C) (b) (7)(E) (b) (6), (b) (7)(C) was not given time to express milk. (b) (6), (b) (7)(C) was also not provided an adequate space. (b) (6), (b) (7)(C) had to pump in (b) (6), (b) (7)(C) car as no adequate space was provided. (b) (6), (b) (7)(C) (b) (7)(E) during the last few weeks (b) (6), (b) (7)(C) was sent home early in lieu of providing (b) (6), (b) (7)(C) with a break to pump. (b) (6), (b) (7)(C) stated that because (b) (6), (b) (7)(C) has not been allowed to express milk as needed (b) (6), (b) (7)(C) production has lessened and (b) (6), (b) (7)(C) has had to supplement with formula.

(b) (7)(E)

(b) (6), (b) (7)(C) is due \$20.00 in back wages.

Reasonable Break Time:

Michael Jefferson, general manager, confirmed that there are times due to business demands that (b) (6), (b) (7)(C) was not able to take a break to express milk when (b) (6), (b) (7)(C) requested it or they would simply send (b) (6), (b) (7)(C) home early. The firm has violated section 7(r)(1)(a) of the FLSA. An employer must provide a nursing mother reasonable amount of time to express milk.

Adequate Space:

Mr. Jefferson also stated that (b) (6), (b) (7)(C) pumps in (b) (6), (b) (7)(C) car, but (b) (6), (b) (7)(C) could use the bathroom, if needed (exhibit B-1). The employer failed to provide (b) (6), (b) (7)(C) with an adequate space. The employer must provide “a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public.” This is a violation of section 7(r)(1)(b) of the FLSA.

Section 6: This was a limited investigation. A review of the profile period was conducted, no apparent minimum wage violations found.

Section 7: This was a limited investigation. A review of the profile period was conducted, no apparent overtime violations found.

Section 11: This was a limited investigation. A review of the profile period was conducted, no apparent recordkeeping violations found.

Section 12:

No apparent child labor violations. There are two 17 year olds working in non-hazardous occupations.

Section 15(a)(3): No violation found.

(b) (7)(E) The firm provided support that due to business demands hostesses are not guaranteed a full 8 hour shift and (b) (6), (b) (7)(C) typically worked longer shifts than the other hostesses. Additionally, (b) (6), (b) (7)(C) had been sent home early on one particular shift for causing a disruption in the restaurant lobby not due to (b) (6), (b) (7)(C) nursing needs. There was not sufficient proof (b) (7)(E) a violation had occurred under section 15(a)(3) of the FLSA, and therefore, equitable relief was not pursued.

FMLA Policy Review: This was a limited investigation. An FMLA policy review was not conducted.

DISPOSITION

The final conference was held via phone on 06/13/2016. Attorney Graening was present for the firm and representing the Department was WHI (b) (6), (b) (7)(C)

This investigator went over (b) (7)(E) and confirmed (b) (7)(E). This investigator explained the break time provisions and how it related to an employer's break time policy. This investigator confirmed that Mr. Jefferson had stated that break time and adequate space violations occurred due to business demands, and because he was unaware of the regulations. Attorney Graening requested more information on the break time and this investigator stated (b) (6), (b) (7)(C) would provide it via email.

This investigator confirmed the immediate action the firm took after this investigator's visit.

The employer's regional director of operations, Amber Messersmith, held a meeting shortly after

this investigator's visit on May 11, 2016 with all regional general managers to ensure knowledge and compliance with the requirements regarding nursing mother break time.

The firm installed a lockable door at the break room entrance to ensure compliance with the adequate space provisions within a few days after this investigator's arrive. (b) (6), (b) (7)(C) confirmed on May 17, 2016 that the door was installed and the employer is providing appropriate break time.

(b) (6), (b) (7)(C) also stated that (b) (6), (b) (7)(C) has not been required to clock out to nurse since this investigator's visit.

This investigator explained that section 15(a)(3) of the Act was violated, and therefore, equitable relief was found due to the employee. This investigator explained that sending the employee home in lieu of providing (b) (6), (b) (7)(C) with a break time to express milk is considered retaliation for asserting (b) (6), (b) (7)(C) rights under 7(r). This investigator addressed the total amount due which includes break time, wages lost when sent home early, formula, and car adapter.

Attorney Graening requested a breakdown of the back wages. This investigator stated back wages would be due by 6/24/2016. Attorney Graening asked how the payment would be done regarding taxable income since there are wages and expenses owed under equitable relief. This investigator stated we could not advise as to payroll taxes. As long as the employer pays the total sum and annotates, if any amount is taxed, then we would not have an issue.

This investigator sent Attorney Graening the WH-55, WH-56, WH-58, instructions, and Federal Register / Vol. 75, No. 244 regarding nursing mothers.

On 6/20/2016, this investigator received a response from Attorney Graening regarding the firm's response to the Department's findings (exhibit D-6). Attorney Graening denied that Olive Garden retaliated against (b) (6), (b) (7)(C) for asserting (b) (6), (b) (7)(C) rights. (b) (6), (b) (7)(C) stated that it is the nature of the business to send employees home early from their shifts if business is slow and that Olive Garden never denied a break to nurse. (b) (6), (b) (7)(C) further emphasized that (b) (6), (b) (7)(C) has worked longer and more frequent shifts than other hostesses and on one particular date (b) (6), (b) (7)(C) was sent home early for disrupting the workplace not because (b) (6), (b) (7)(C) was denied a break to nurse.

After review and discussion with management, there was not enough evidence to support retaliation and therefore, it will not be pursued. The employer agreed to compensate (b) (6), (b) (7)(C) for the car adapter (exhibit A-1).

Violations were found under 7(r)(1)(a) and 7(r)(1)(b) of the FLSA. No violation under section 15(a)(3) was cited. Therefore, the employer has agreed to remedy. The employer has agreed to pay the employee back wages by next pay period.

(b) (6), (b) (7)(C) Notification:

(b) (6), (b) (7)(C) was notified by phone on 6/23/2016 on the findings of the investigation.

Recommendation:

1. (b) (7)(E), I recommend case to be closed administratively (b) (7)(E)

Publications: HRG, Sec 7(r), FS #44, FS#73, FS#28D

(b) (6), (b) (7)(C) _____
Wage & Hour Investigator Date

Olive Garden Case ID: 1791468

WHISARD Compliance Action Report

U.S. Department of Labor Wage and Hour Division

Case ID: 1799964 Originating District: Los Angeles District Office
Local Filing Number: 2016-231-08725 Investigating District: Los Angeles District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 08/22/2016
Assignment Date: 08/22/2016

Employer Information

Trade Name: Shield HealthCare Legal Name: Shield California Health Care Center Inc
Address: 27911 Franklin Pkwy EIN: 95-1940459
Valencia, CA91355 County: Los Angeles
NAICS Code: 33911
No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 09/12/2014 BNPI:
To: 09/12/2016 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Full Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	3	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

This was (b) (7)(E) FLSNM & FLSA case. Vios were estb since ER did not provide adequate space for mother's to nurse. The women's restroom was used. ER came into compliance and agreed to remain in future compliance. No FLSA violations were identified.

WHI Signature: _____ Date: 10/12/2016

Reviewed By: _____ Date: _____

Legal Name: Shield California Health Care Center Inc. Case ID: 179-9964
Trade Name: Shield Healthcare Case File: 2016-231-08725
27911 Franklin Parkway Tel: 661-294-6640
Valencia CA 91355 EIN: 951-910-459

Fair Labor Standards Act – Nursing Mothers (FLSANM) Narrative Report

Background:

This investigation was initiated (b) (7)(E) (b) (6), (b) (7)(C) (b) (7)(E) the only space the company had provided for mother's needing to express milk was the restroom. The facts of the case (b) (7)(E) (b) (7)(E) The employer agreed to come into compliance by created a lactating space in accordance to FLSANM regulations.

Investigative Period: The investigative period is from September 12, 2014 to September 12, 2016.

Company Information:

Shield California Health Care Inc. dba Shield Healthcare is a California corporation. The company incorporated on May 13, 1957 (Exhibit D-5). The establishment is a large distributor of medical supplies largely for patients living within their private residence. The company's headquarter is located at 27911 Franklin Parkway, Valencia CA 91355. The establishment also has small offices throughout the United States. The executive team consists of James Snell – President, Paul Collins – Vice President, Roger Miller – Chief Marketing Officer, and Jennifer Puelo, Vice President of Human Resources. All communication for purposes of this investigation was with Heidi Haen, Human Resources Manager.

3-d Employer:

Heidi Haen and Jennifer Puelo both meet the definition of a 3-d employer. They are both responsible for the day-to-day operation of the human resources department which includes employee wages, benefits, and policies.

3-d coverage as it pertains to the remainder of the executive team was not explored since the company had come into compliance prior to the scheduled initial conference date with Wage and Hour and the case was administratively closed.

COVERAGE

Enterprise and individual coverage are applicable for the entire period of the investigation. See below for details.

Enterprise coverage applies for the entire period of the investigation as the firm meets the 3 criteria required for coverage:

Two or more employees: The establishment has employed well over 2 full time employees during the entire period of the investigation. The Valencia Office alone employees (b) (4) (Exhibit A-0 to A-0cc)

Interstate commerce: The establishment orders medical supplies from companies located throughout the United States and internationally. Some examples include Coloplast Medical Supplies headquartered in Denmark and Bard Medical Supplies located in Georgia, USA. (Exhibit D-12)

Annual Dollar Volume (ADV): The establishment's ADV for the last 2 years has been over (b) (4). In lieu of providing tax records, the established produced a letter conceding that sales have exceed \$500,000 within the last 3 years. (Exhibit C-2)

Individual Coverage:

Individual coverage is likely applicable to all the employees at the establishment. However, was not fully developed due to the strong existence of enterprise coverage.

MODO: The Los Angeles District Office is the MODO. (b) (7)(E) (Exhibit D-1)

Linking: Not applicable. There are no prior cases.

(b) (7)(E)
(b) (6), (b) (7)(C), (b) (7)(E) (Exhibit

D-4)

Mapping:

The establishment's operation impacts senior and the infirm needing medical supplies, insurance companies, and suppliers of medical equipment. The company bills various large insurance companies for medical supplies needed by their customers. Some of the insurance companies that Shield Health Care works with include Meidcal, Medicare, Blue Cross, Blue Shield, Kaiser, and Aetna. (b) (4)

(Exhibit D-12).

Prior Investigations:

Based on a Whisard search there are no prior investigation on this company.

EXEMPTIONS:

The exemption were not fully explored. One of the lowest paid exempt employees, (b) (6), (b) (7)(C) was selected to be interviewed. (b) (6), (b) (7)(C) was compensated an annual salary of (b) (6), (b) (7)(C) duties met the 541 executive exemption criteria. (b) (6), (b) (7)(C) primary duty involved overseeing the work of 18 staff members. (b) (6), (b) (7)(C) was responsible for hiring, firing, promoting, and recommending raises. (b) (6), (b) (7)(C) spent the majority of (b) (6), (b) (7)(C) time performing managerial duties. (Exhibit B-8)

Exemptions were not fully explores since this case primarily focused on the Fair Labor Standards – Nursing Mothers Act and there was no indication in the file that employees were misclassified.

STATUS OF COMPLIANCE:

Section 6 (Minimum Wage):

No violations were established. Based on employee interview statements and a spot check of payroll records, all employees were compensated well over the federal minimum wage of (b) (4) an hour. (Exhibits B-1 to B-8 and A-0 to A-0cc)

Section 7 (Overtime):

No violations were established. Based on employee interview statements and a spot check of payroll records, all employees were compensated time-and-one-half of their hourly rate for hours worked in excess of 40 within a workweek. All employees interviewed conceded to the payment of overtime. (Exhibits B-1 to B-7). Additionally, the company compensates overtime for all seconds worked past 8 hours in a day or 40 hours in a week. For example, if a customer service representative is on the phone and unable to stop working until 1 minute past her scheduled end time, she/he will be compensated 1 minute of overtime. (See Exhibits A-0 to A-a (highlighted samples) and C-1b (bottom))

Section 7(r)(1)(A) – Reasonable Time Break:

No violations found. The employer allowed employees to use their lunch breaks and rest period to express milk. (Exhibits B-3 last paragraph, B-4a second paragraph, and B-7a)

Section 7(r)(1)(B) – A place other than a bathroom, shielded from view and free of intrusion:

(b) (7)(E) [REDACTED] The employer failed to provide adequate lactation space for nursing mothers. While the employer provided nursing mothers with space to lactate, it was inside the women's bathroom. (Exhibit D-7 to D-7c)

Within the investigative period (09/12/14 to 9/12/16), 5 women had needed lactation space. (Exhibit D-13). Based on interview statements from all of the nursing mothers, none of the women or their babies suffered any illness as a result of the lactation space being within the restroom. (Exhibit B-3, B-6, B-7 last paragraph, B-8 second paragraph) Some employees reported reluctance to use the lactation space as a result of it being located in the women's restroom. Since no direct harm was identified as a result of the employer having the lactation space in the restroom, no monetary liability was computed.

The employer is currently in compliance. A lactation policy was created and distributed to all employees via e-mail. (Exhibit D-11) See Disposition Section for more detail.

Section 11 (Record Keeping):

No violations established. The employer had maintained and produced a record of all

employee names, addresses, wages earned, and hours worked.

SECTION 12:

No violations of Section 12 established. Based on a tour of the establishment, employee interview statements, review of payroll, and interview with management there are no minors employed by the company.

DISPOSITION:

The final conference was held on September 30, 2016. Present on behalf of the Shield Healthcare was Haidi Haen, Human Resources Manager. WHI (b) (6), (b) (7)(C) represented the Department. WHI (b) (6), (b) (7)(C) discussed Wage and Hour Division's compliance under Sections 6, 7, 11, and 12. WHI (b) (6), (b) (7)(C) also informed Ms. Haen that this investigation had not fully explored the 541 exemptions.

The Nursing Mother's regulations under the FLSA were discussed at length. Ms. Haen stated that the company had taken measures to change the lactation space from the restroom to a private office that had a single cubical space for lactating mothers. (Exhibit D-6 to D-6e) The space included a private cubical space, a table, chair, outlet, and a sign indicating whether the space was occupied or not. Ms. Haen stated that at the present time there is only one mother that is expressing milk. Ms. Haen understood that if the situation changes and there are multiple mothers that need to express milk, the company will need to communicate with the employees and either create a break schedule allowing each mother time to express milk. Ms. Haen agreed that if the schedule does not work with the mothers' need to express milk, the company will create a second cubical which will have a table, chair, outlet, and a sign signifying whether the space is occupied or not. Ms. Haen further agreed not to allow any mother to express milk from the restroom lactation space.

Ms. Haen also stated the company will continue to allow nursing mothers to use their 2 short breaks that are 15 minutes each and their 30 minute lunch break. Ms. Haen further stated that the company will allow mothers to take additional unpaid time if needed to express milk.

Ms. Haen presented WHI (b) (6), (b) (7)(C) with the new nursing mother's policy and agreed to distribute to all employees via e-mail. Ms. Haen stated that the nursing mother's policy has also

been posted on the employee personnel website for all employees to freely excess.

(b) (6), (b) (7)(C) was contacted on October 5, 2016 via telephone and informed of the findings of the investigation.

RECOMMENDATIONS:

I recommend that this case be administratively closed. (b) (7)(E)

The following publications were provided during the initial meeting with the employer:
Fact Sheet # 77A: Prohibiting Retaliation Under the Fair Labor Standards Act (FLSA)
Fact Sheet #73: Break Time for Nursing Mothers under the FLSA
Fact Sheet #44: Visits to Employers
FLSA Handy Reference Guide

(b) (6), (b) (7)(C)

Wage and Hour Investigator
October 3, 2016

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1813837 Originating District: Sacramento District Office
Local Filing Number: 2017-302-07425 Investigating District: Sacramento District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 02/09/2017
Assignment Date: 02/09/2017

Employer Information

Trade Name: All Health Services Corporation

Legal Name: All Health Services Corporation

Address: 206 W 8th St

EIN: 20-8077955

County: Kings

NAICS Code: 561311

Hanford, CA93230

No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 10/17/2016
To: 12/04/2016
Investigation Type: (b) (7)(E)
Investigation Tool: Limited Investigation
Compliance Status: Agree to Comply

BNPI:
Reinvestigation: ☐
Recurring Violation: ☐
Future Compliance Agreed: ☒
Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

(b) (7)(E) FLSANM. COV: FLSA 203(s)(1)(A) & EEs hndlng goods trvng in intrste commrce. EX: N/A. SOC: FLSANM Vios- 207(r)(1)(B= ER failed to provide set locationg for (b) (7)(E) to utilize. FC held 08/9/17 @ est w/ER Mr. Robert Garcia. ATFC. Pubs: See narrative.

WHI Signature: _____ Date: 08/11/2017

Reviewed By: _____ Date: _____

All Health Services Corporation
EIN: 20-8077955
206 W. 8th Street
Hanford, CA 93230

Case ID #1813837
Case File #2015-302-06659

Points of Contact:
Mr. Robert Garcia
206 W. 8th Street
Hanford, CA 93230
(559) 583-9101

Fair Labor Standards Act- Nursing Mothers Narrative

COVERAGE:

All Health Services Corporation, no other dba functions as a nursing staffing agency. Firm was opened and incorporated in the state of California as of 2014. The corporate officers are Robert Garcia; Secretary, Brenda Neitzel; Chief Financial Officer and Jeremy Mathews; Chief Executive Officer (See exhibits C-1 and C-5). Currently, All Health Services Corporation employs [REDACTED] permanent full-time office workers and [REDACTED] temporary medical staff (See exhibits C-1 and D-18).

The firm is covered under enterprise coverage as defined under the FLSA Section 203(s)1(A). The annual gross sales (ADV) for All Health Services Corporation are as follows: 2014- [REDACTED]; 2015- [REDACTED]; 2016- [REDACTED] (See exhibits C-1 and C-7). The firm currently employs more than two employees who regularly handle goods that have traveled in interstate commerce, such as Purell hand sanitizer manufactured by GOJO Industries, Inc in Akron, OH (See exhibit C-6).

Section 203(d) Employer: Mr. Robert Garcia meets the definition of an employer under Section 3(d) of the FLSA because he oversees and employs permanent and temporary workers (See exhibit C-1).

Mapping:

All Health Services Corporation is a nursing staffing agency located in Hanford, CA. Firm provides temporary employment services to a variety of medical businesses. All Health Services Corporation has had two contracts during the last two years; one with Management Solutions and one with Contra Costa County. Management Solutions is contracted with the California Department of Corrections and Rehabilitation and is responsible for providing temporary medical staff to the State's facilities/institutions (C-1 through C-3 and D-15).

Period of Investigation: 10/17/2016 to 12/04/2016 (limited to (b) (6), (b) (7)(C) and the time (b) (6), (b) (7)(C) worked at the Central California Women's Facility).

Prior History: This is the first time All Health Services Corporation is investigated by the Wage & Hour Division.

Main Office District Office: The legal name of the firm is All Health Services Corporation. The firm's main office is located on 206 W. 8th Street, Hanford, CA 93230 which is within the Sacramento District Office. There are no other branches.

Joint Employment:

All Health Services Corporation & California Department of Corrections and Rehabilitation dba Central California Women's Facility:

An analysis of the factors set forth in 29 CFR 500.20(h)(5)(iv)(A) through (G) and 29 CFR 791 determined that a joint employment relationship **does** exist between All Health Services Corporation & California Department of Corrections and Rehabilitation dba Central California Women's Facility.

The following joint employment factors were met: **A, B, C, E and F**

Factor Met – The power to either alone or through control of the employer to direct, control or supervise the workers. All Health Services Corporation recruits and hires the temporary medical employees (“temps”). Once temps are placed at the Central California Women's Facility (CCWF), the CCWF directs, controls, and supervises the temps through their direct supervisors. However, if a temp is unable to report to work, the temp is required to contact All Health Services Corporation via telephone and All Health Services Corporation will inform his direct client Management Solutions who then informs their client CCWF. Temps placed at CCWF are directly controlled by

a number of CCWF's supervisors who report to and get instructions from CCWF. CCWF determines the employee's work schedule and buildings where employee is assigned to work each day (See exhibits B-1, B-3, B-5, B-6, B-7, B-10 and C-1 through C-3).

Factor Met – The power either alone or in addition to another employer, directly or indirectly, to hire or fire, modify the employment conditions, or determine the pay rates or the methods of wage payment for workers. Central California Women's Facility (CCWF) has complete power to cancel temp's contract at any point and have the temp removed from job assignment with or without an explanation. All CCWF has to do is request removal through their contracted vendor management company; Management Solutions (MS), and MS will communicate with All Health Services to inform of the temp's removal. All Health Services has a written contract with Management Solutions whom through his sub-contractors provides health care professionals to the California Department of Corrections and Rehabilitation. The written contract between Management Solutions and All Health Services states that due to the nature of job (temporary), their client (CCWF) has the right to stop job assignments due to no longer needed or due to poor performance (See exhibits C-1 through C-3 and D-15-d). However, CCWF or Management Solutions do not have a say in whether a temp continues to work at All Health Services. Management Solutions and the California Department of Corrections and Rehabilitation decide the contract amount paid to All Health Services for proving a “temp” but All Health Services decides and sets the pay rate and the method of payment for “temp” (See exhibits C-1 through C-3 and D-15-v).

Factor Met – The degree of permanency and duration of the relationship of the parties. All Health Services has had a written contract with Management Solutions since 2015. Even though All Health Services does not have a direct contract with the California Department of Corrections and Rehabilitation or the Central California Women's Facility, they have been providing temporary medical staff to them through Management Solution since 2015 (See exhibit C-1).

Factor Not Met – The extent to which the services rendered by the workers are repetitive, rote tasks requiring skills which are acquired with relatively little training. Temps placed to work at the CCWF through Management Solutions are required to have a certificate from the State of California Nursing Board which is obtained by taking a short course, doing clinical and passing a

test. Temps are also required to have at least one year of experience in the medical field. Training is not provided by any of the agencies involved (See exhibits B-3, B-5, B-10 and C-1 through C-3).

Factor Met – Whether the activities performed by the workers are an integral part of the overall business operation of the employer. All Health Services provides nursing staff “temp” to CCWF through Management Solutions. Nursing staff assist facility's inmates who are being mentally treated or observed. Nursing staff/temps' work is an integral part of the overall business operations of the State facility because they have a legal obligation to keep inmates safe and healthy at all times (See exhibits B-1, B-3, B-6, B-7, C-1 and C-4).

Factor Met – Whether the work is performed on CCWF's premises, rather than on premises owned or controlled by another business entity. Temps work at the Central California Women's Facility which is 100% controlled by the California Department of Corrections and Rehabilitation (See exhibits B-1, B-3, B-5, B-6, B-7, B-10 and C-1 through C-4).

Factor Not Met – Whether CCWF undertakes responsibilities in relation to the workers which are commonly performed by employers. All Health Services administers the workers' compensation policies. All Health Services runs payroll and pays the temps. Temps fill out a CCWF's timecard that is then provided to All Health Services through Management Solution. Any necessary materials, tools and equipment used in the medical department are provided by CCWF (See exhibits C-1 through C-3).

EXEMPTIONS:

No exemptions claimed or tested.

Eligibility: (b) (6), (b) (7)(C) was an hourly, non-exempt employee and was subject to Section 207 of the Act. (b) (6), (b) (7)(C) was paid an hourly rate of (b) (6), (b) (7)(C) and worked as a Certified Nurse Assistant therefore entitled to protection under the nursing mother provisions of Section 207(r) (See exhibits B-10 and C-1).

STATUS OF COMPLIANCE:

Reason for Investigation: This limited investigation was initiated by (b) (7)(E). (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) worked for temporary employment agency; All Health Services and was placed at the Central California Women's Facility located in Chowchilla, CA to work as a Certified Nurse Assistant. (b) (6), (b) (7)(C) (b) (7)(E) was not always provided with the necessary breaks for expressing (b) (6), (b) (7)(C) breast milk and that (b) (6), (b) (7)(C) was required to pump in a bathroom. (b) (6), (b) (7)(C) further stated that (b) (6), (b) (7)(C) was retaliated against and let go due to requesting time for expressing (b) (6), (b) (7)(C) breast milk. (b) (7)(E)

(b) (6), (b) (7)(C) (b) (7)(E) (See exhibit D-1). (b) (6), (b) (7)(C) was a nursing mother who needed to express milk for (b) (6), (b) (7)(C) child and it had been less than one year since the child's birth (See exhibits B-10 and C-1).

A concurrent Fair Labor Standards Act –Nursing Mothers investigation was conducted on joint employer “California Department of Corrections and Rehabilitation, dba Central California Women's Facility”(See case ID# 1825300).

The investigation disclosed three parties involved in the recruitment, hiring, supervision and termination of temporary health care employees such as (b) (6), (b) (7)(C). The following explains relationship between the three:

All Health Services (staffing agency) recruits and hires health care employees such as registered nurses, licensed vocational nurses, license psychiatrics, certified nurse assistants and medical assistants. All Health Services has a contract with two parties and provides them temporary health care employees to fulfill their client's needs. All Health Services provides employees that are placed to work at different correctional facilities in the state of California through their contract with Management Solutions. All Health Services also provide employees that are placed at different hospitals and medical facilities through their contract with Contra Costa County. All Heath Services decides the hourly rate that is paid to employees and runs payroll for wages. A weekly timesheet is completed by employees at the State facility; the facility provides this to Management Solutions and Management Solutions forwards this to All Health Services. All Health Services is neither involved with the supervising/directing of employees' daily activities nor the employee's work schedule; this is decided by the State facility where the employee is placed (See exhibits

B-3, B-5, C-1 through C-3, D-15 and D-16).

Management Solutions (vendor management company) has many sub-contractors (staffing agencies) that provide health care professionals to their exclusive client; the California Department of Corrections and Rehabilitation (CDCR). Management Solutions has a contract with CDCR to fulfill any health care staffing needs such as temporary releases or temporary assignments for all the facilities in the state of California. Management Solutions has website where the state facilities post orders requesting services of health care employees. Staffing agencies such as All Health Services have access to this website and are able to see any existing opportunities. Through this same web site, staffing agencies are able to submit their applicant's resume and license information. Management Solutions' job is to pre-screen the resumes to make sure applicants qualify for position based on state's facility requirements. If an applicant qualifies, Management Solutions follows up with the applicant via telephone to verify applicant is informed of the assignment dates and duties as well as to verify credentials, nursing state license and experience. If employee qualifies his/her resume is forwarded (on a first come first served basis) to the state facility requesting the employee. At that point the facility responds to Management Solutions with a "Yes" or "No". If the response is a "Yes", Management Solutions communicates back with the staffing agency to inform them that the facility said they want to move forward with employee and request staffing agency to upload additional documents such as background check. Once that is done, the employee is given a start date (See exhibits B-3, B-5, C-1 through C-3 and D-15).

Management Solutions does not discuss pay with employees. Management Solutions pays the staffing agency a standard bill rate which is an hourly rate based on the job classification the employee will be performing. Bill rates are set and listed in the already established contract between the California Department of Corrections and Management Solutions. The staffing agency decides what hourly rate the employee will be paid based on the work he/she will be performing. According to Management Solutions, individuals are not offered/given a permanent position with the facility, the assignment is temporary and the facility has the right to end assignment at any point with or without a cause (See exhibits B-3, B-5, C-1 through C-3, D-15 and D-15-v).

Management Solutions is not involved in the daily activities or work schedule of employees; the State facility does. Management Solution simply acts as an agent for the CDCR who is responsible for the communication between All Health Services and CDCR. The state facility contacts Management

Solutions with any issues in relation to the worker and Management Solutions communicates this to the staffing agency. If a State facility decides to stop an assignment due to “no longer needed” or “poor performance”, the facility sends a notice to Management Solutions explaining the facility's reasons and Management Solutions forwards this information to the staffing agency. Management Solutions does not have a say on what temp is chosen and what temp is removed. They only pass the message from one side to the other (See exhibits B-3, B-5, C-1 through C-3 and D-15-d).

The State facility has complete control over the employee's daily duties, assignment of responsibilities, work schedule and has the final say when deciding who and when to use and/or terminate a service/temp contract. If a job assignment is ended due to the employee's poor performance, the State facility fills a form called DNR (Do not return) which is provided to Management Solutions. A DNR prevents Management Solutions from recruiting that specific employee back to work at any of the State facilities (See exhibits B-3, B-5, C-1 through C-3 and D-15-d).

SECTION 207(r)(1)(A): Reasonable Break Time - No Violation Found

When an inmate attempts to hurt herself or threatens to hurt herself, the State facility is required to place inmate under “one-to-one suicide watch” until she is seen and/or released by a psychiatric. (b) (6), (b) (7)(C) job duties were to sit outside of an inmate's medical room that was being treated or observed and be vigilant of inmate's activities through a small glass window to prevent inmate from hurting herself or committing suicide. The facility is legally required to keep an eye on these inmates at all time and therefore, an employee who is assigned to this duty is unable to walk away without being relieved by another employee. (b) (6), (b) (7)(C) (b) (7)(E) (b) (6), (b) (7)(C) was unable to take the necessary breaks to express (b) (6), (b) (7)(C) breast milk due to not finding co-workers willing/able to relieve (b) (6), (b) (7)(C) from duty on a timely basis (See exhibits B-1, B-3, B-6, B-9, B-10 and C-1).

Based on the interviews taken from a number of supervisors, employees and (b) (6), (b) (7)(C) it was determined that (b) (6), (b) (7)(C) failed to properly communicate with All Health Services, (b) (6), (b) (7)(C) immediate supervisors at the State facility, (b) (6), (b) (7)(C) co-workers and the human resources department located in the State Facility to address (b) (6), (b) (7)(C) needs and issues regarding taking the breaks (b) (6), (b) (7)(C) needed to express (b) (6), (b) (7)(C) breast milk. (b) (6), (b) (7)(C) stated (b) (6), (b) (7)(C) did not communicate with All Health Services to make them aware of the problem (See exhibits B-3 and B-10) Also, when (b) (6), (b) (7)(C) started (b) (6), (b) (7)(C) job assignment at the Central California Women's Facility (CCWF), (b) (6), (b) (7)(C) met with human resources personnel (name

unknown) to discuss process for lactation accommodations and was instructed to contact human resources personnel if (b) (6), (b) (7)(C) ran into any issues relating taking the necessary breaks for expressing breast milk which (b) (6), (b) (7)(C) failed to do (See exhibits B-8 and B-10). Interview statements also disclosed that (b) (6), (b) (7)(C) was allowed to take the breaks (b) (6), (b) (7)(C) needed as frequent as needed and was given instructions to communicate with supervisors if (b) (6), (b) (7)(C) wasn't able to find someone available to relieve (b) (6), (b) (7)(C) so that the supervisor on shift could come do so but (b) (6), (b) (7)(C) failed to do that as well (See exhibits B-1, B-2, B-4, B-5, B-6, B-7, B-9, B-10 and C-3). If (b) (6), (b) (7)(C) would have properly communicated with any of three mentioned above (staffing agency, supervisors, HR) the issue would have been resolved on a timely manner.

SECTION 207(r)(1)(B): Place Shielded from View and Free from Intrusion - Violation Found

Even though supervisors expressed supportiveness to accommodate (b) (6), (b) (7)(C) necessary breaks for expressing breast milk, they failed to designate an available set location for (b) (6), (b) (7)(C) to utilize. (b) (6), (b) (7)(C) was informed (b) (6), (b) (7)(C) could use any available spaces- patient's room, supervisor's office, storage room, break room, and/or bathroom. However, (b) (6), (b) (7)(C) was at times unable to find a space available at the time of need. (b) (6), (b) (7)(C) stated most of the locations were locked during night time and (b) (6), (b) (7)(C) was forced to use the bathroom which is not an acceptable location under the nursing mother's provision. When investigator visited facility, supervisor (b) (6), (b) (7)(C) disclosed two places utilized by complainant to express milk; unoccupied patient's rooms and (b) (6), (b) (7)(C) office. Both of these locations were shielded from view and free from intrusion from co-workers. Supervisor (b) (6), (b) (7)(C) was unable to located storage room or breakroom described by (b) (6), (b) (7)(C) therefore they were not inspected by the investigator (See exhibits B-1, B-4, B-6, B-7, B-8, B-9, B-10 and C-1).

On March 30, 2017 during the initial conference held with Marcia Contreras (Staff Services Manager), a designated lactation room was disclosed to the investigator. Investigator inspected the lactation room located in the administration building during the tour of the establishment. This room is a locker-bathroom-lactation area. The lactation area is technically formed of a red sofa sitting next to a set of lockers located in the same room as the toilets. Designated lactation room does not meet the requirements specified under the act due to room failing to have a wall with a door between the lactation area and the toilets/lockers area. In addition, lactation area does not have a flat surface other than the floor to place the pump as required under the act. The administration department is closed during the night and

not accessible to the night shift workers, therefore, not used by (b) (6), (b) (7)(C) (See exhibit C-1).

Section 215(a)(3) – Retaliation Under the FLSA: No Violation found.

(b) (7)(E) A review of the events that occurred is as follows (See exhibits B-1 through B-10, C-1 and D-2 through D-15):

(b) (6), (b) (7)(C) (b) (7)(E) the Central California Women's Facility terminated (b) (6), (b) (7)(C) employment/contract due to employer being unwilling to accommodate (b) (6), (b) (7)(C) with the needed breaks to express (b) (6), (b) (7)(C) breast milk. (b) (6), (b) (7)(C) stated that having co-workers pulled away from their assigned work to come relieve (b) (6), (b) (7)(C) was difficult and created conflict among co-workers. (b) (6), (b) (7)(C) (b) (7)(E) on December 5, 2016 as (b) (6), (b) (7)(C) was being walked off the premises by supervisor (b) (6), (b) (7)(C) disclosed to (b) (6), (b) (7)(C) that the reason why (b) (6), (b) (7)(C) was being let go was because (b) (6), (b) (7)(C) was a no call/no show on 12/2/2017. (b) (6), (b) (7)(C) also (b) (7)(E) (b) (6), (b) (7)(C) in confidence expressed the following to (b) (6), (b) (7)(C) “Between you and me, it's been difficult to accommodate you here”, “You should try to work at the men's prison as that location is able to accommodate your nursing breaks better” (See exhibits B-10). (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) right away contacted All Health Services to inquire about working for the Valley State Prison (men's prison) but (b) (6), (b) (7)(C) was informed that there were no open opportunities at that facility. (b) (6), (b) (7)(C) contacted (b) (6), (b) (7)(C) (recruiter) from All Health Services and explained (b) (6), (b) (7)(C) had been walked off from facility and was told (b) (6), (b) (7)(C) contract had been terminated (See exhibit B-10). Ms. Tiffany contacted Management Solutions and spoke with (b) (6), (b) (7)(C) regarding the termination of (b) (6), (b) (7)(C) work assignment. (b) (6), (b) (7)(C) stated that the facility had submitted a DNR Summary (Do not return) stating (b) (6), (b) (7)(C) service contract had been terminated due to the following circumstances which were claimed to have violated “The Department Operations Manual (DOM)”, under the Employees, Contractors and Volunteers (See exhibits B-3, C-3 and D-6):

- 1) (b) (6), (b) (7)(C) had a poor attendance pattern, claiming (b) (6), (b) (7)(C) had been coming in late to work from November 14, 2016 to the end of (b) (6), (b) (7)(C) contract.
- 2) (b) (6), (b) (7)(C) attitude issues, claiming (b) (6), (b) (7)(C) attitude towards other staff members had been very unprofessional causing a non-team player working environment.
- 3) (b) (6), (b) (7)(C) was a no call no show on December 2, 2016 and called in sick on December 3, 2016.

Even though (b) (6), (b) (7)(C) stated reasons stated above were false, the Central California Women's

Facility (CCWF) provided copies of timesheets substantiating (b) (6), (b) (7)(C) tardiness pattern. Timesheets indicated that (b) (6), (b) (7)(C) had been 5-30 minutes late on 8 occasions between November 8, 2016 and December 4, 2016 (See exhibits D-12). The CCWF also provided a copy of (b) (6), (b) (7)(C) work schedule along with a copy of the facility's visitor registration sheet showing (b) (6), (b) (7)(C) was scheduled to work on December 2, 2016 and did not signed in to enter the facility, confirming (b) (6), (b) (7)(C) did not work on such date (See exhibits D-11, D-12-h, D-13 and E-1). CCWF did not have any written documentations regarding alleged attitude issues claiming such records are not kept for contract-workers as they are not considered to be state employees. However, an indication of (b) (6), (b) (7)(C) undesirable attitude towards supervisors and co-workers was demonstrated through interview statements taken from both (b) (6), (b) (7)(C) immediate supervisors and co-workers (See exhibits B-1, B-4, B-7 and B-9). Wage and Hour Investigator interviewed supervisor (b) (6), (b) (7)(C) to obtain information regarding conversation with (b) (6), (b) (7)(C) on the last day of employment (b) (7)(E) (b) (6), (b) (7)(C) (See exhibit B-7).

All Health Services attempted to look for other work options and offered (b) (6), (b) (7)(C) a work opportunity with the Corcoran State Facility only a few days after (b) (6), (b) (7)(C) contract with CCWF had ended. (b) (6), (b) (7)(C) rejected work opportunity due to longer commute (See exhibits B-3, B-10 and C-1).

On May 18, 2017, (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) had been assigned to work at the Valley State Prison (men's prison) located in Chowchilla, CA and that (b) (6), (b) (7)(C) had started orientation on 5/17/2017 (the day before). (b) (6), (b) (7)(C) added that (b) (6), (b) (7)(C) had informed All Health Services that (b) (6), (b) (7)(C) was no longer interested in expressing breast milk because (b) (6), (b) (7)(C) didn't want any issues and also because (b) (6), (b) (7)(C) child was turning one year old on June 14, 2017 which was one month away (See exhibit B-10-f and B-10-g).

On July 11, 2017, (b) (6), (b) (7)(C) contacted Investigator to get an update on case and also to disclose that (b) (6), (b) (7)(C) had been let go from the Valley State Prison right after (b) (6), (b) (7)(C) completed (b) (6), (b) (7)(C) orientation (5/19/2017). (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) was assigned to start work on (b) (6), (b) (7)(C) but was not allowed to enter the facility once (b) (6), (b) (7)(C) arrived. (b) (6), (b) (7)(C) contacted Tiffini Garcia (recruiter for All Health Services) and explained situation (See exhibit B-10-h). Tiffani contacted Management Solutions and spoke with (b) (6), (b) (7)(C) who stated that Valley State Prison had changed their mind and changed request to "No longer Needed" and also explained that (b) (6), (b) (7)(C) was on a "Do Not Return" status with all state facilities therefore, unable to be placed to work at any of the state's facilities (See exhibit B-3-d). Based on notes provided by

Tiffany, it was concluded that (b) (6), (b) (7)(C) did not disclosed the true reason as to why (b) (6), (b) (7)(C) contract had been terminated with the CCWF claiming (b) (6), (b) (7)(C) was let go due to CCWF having too many CNAs (See exhibit D-2).

According to Tiffany, this situation is quite normal. She explained that whenever there are issues with attendance, the facility tends to place employees on "DNR". She also added that they have had 8-9 employees to which this same situation happened to on the last 12-24 months (See exhibits B-3-d, D-7 and D-8). Tiffany also explained that All Health Services no longer has any work opportunities for (b) (6), (b) (7)(C) being that the only client they are able to provide Certified Nurse Assistants to is Management Solutions. Tiffany states that (b) (6), (b) (7)(C) is able to apply to work directly with the State facility but not through the registry (See exhibit B-3-d and D-3).

As conclusion, the investigation did not find enough evidence to substantiate (b) (6), (b) (7)(C) contract termination was due to or in connection with retaliation or discrimination.

DISPOSITION:

On 08/09/2017, a final conference was held at the All Health Services establishment located in Hanford, CA. Present during the conference were Roberto Garcia (Secretary) and Tiffini Garcia (Recruiter). Wage and Hour Investigator (WHI) discussed the limited scope of the investigation, the Fair Labor Standards Act provisions- including coverage, nursing mothers, minimum wage, overtime, recordkeeping and child labor. WHI also explained joint employment and employer responsibilities, including the joint employment relationships between All Health Services and the California Department of Corrections and Rehabilitation (CDCR) dba Central California Women's Facility (CCWF).

The employer was notified of the findings of the investigation as it related to (b) (6), (b) (7)(C) and the provision that had been violated as explained in the status of compliance. Mr. Robert Garcia indicated the following reason as to why the firm was not in compliance with the Fair Labor Standards Act and what he has done and will continue to do to avoid issues in the future:

Mr. Garcia stated that neither he nor his staff was ever contacted by (b) (6), (b) (7)(C) to make them aware of the issues (b) (6), (b) (7)(C) was having with accommodations at the state facility. Mr. Garcia stated that when (b) (6), (b) (7)(C) was first recruited and placed to work at the CCWF, they were aware that

(b) (6), (b) (7)(C) was a nursing mother with needs for accommodations. Therefore, Tiffini Garcia (recruiter) communicated with Management Solutions to assure that CCWF did not have any problems with (b) (6), (b) (7)(C) accommodations. Management Solutions verified with CCWF and informed Tiffani that CCWF was aware of (b) (6), (b) (7)(C) situation and had no problem accommodating both the necessary breaks and a practical space for (b) (6), (b) (7)(C) to utilize. Mr. Garcia added that (b) (6), (b) (7)(C) never contacted them to address issue therefore he was unaware of the situation. Mr. Garcia stated that he has implemented changes that were effective right after the initial conference back on 3/14/2017. The firm has updated their employee handbook which now includes the nursing mother's provision under the Fair Labor Standards Act. A copy of the new/updated employee handbook has been mailed to all current employees and will be provided to any new hires as well. Mr. Garcia also stated that the company has created a system to keep a record of employees who are nursing mothers and are protected under the nursing mother's provision which will allow them to maintain periodic communication/check-ups with them to assure they are being properly accommodated.

Mr. Garcia agreed to future compliance with all provisions under the Fair Labor Standards Act.

The point-of-contact is Mr. Robert Garcia at (559) 583-9101.

(b) (6), (b) (7)(C) Notification:

(b) (6), (b) (7)(C) was notified of the results of the investigation on 08/11/2017 via telephone.

Publications:

The following publications were provided to Mr. Robert Garcia on 08/09/2017 at the establishment: FLSA (WH 1318). Fact Sheets #13, 14, 17A, 21, 22, 23, 28, 28D, 43, 44, 73. Frequently Asked Questions – Break Time for Nursing Mothers (printed from www.dol.gov/whd).

HRG and Fact Sheets #28D, 44, 73, 77A were provided Mr. Robert Garcia during the initial conference on 3/14/2017.

Recommendation:

It is recommended that the case be closed administratively with no further action.

(b) (6), (b) (7)(C)

Wage & Hour Investigator
08/11/2017

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1814630 Originating District: Los Angeles District Office
Local Filing Number: 2017-231-08989 Investigating District: Los Angeles District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 02/17/2017
Assignment Date: 02/24/2017

Employer Information

Trade Name: USPS LA P&DC Legal Name: United States Postal Service, Los Angeles
Address: 7001 S Central Ave EIN: 41-0760000
County: Los Angeles
NAICS Code: 491110
No. Of Employees: 2000
Los Angeles, CA90001

Investigation Information

Period Investigated From: 03/22/2015 BNPI:
To: 03/21/2017 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	2	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

Ltd invt: FLSA NM. (b) (7)(E) case. Cov: pub agency USPS LA packing and distrib. ctr. (b) (7)(E) ER failed to provide adequate place to express milk. (b) (7)(E). ER: rep attny Tuyet Nguyen. Sec7(r) violation found for 2 EE's from different departments of the distribution center. Nursing mothers: (b) (6), (b) (7)(C) ER remedied all vio, and ATC. Outreach offered, pubs: FS 44, 77A, 67. Rec: No monetary viol, administratively close.

WHI Signature: _____ Date: 06/16/2017

Reviewed By: _____ Date: _____

**United States Postal Service, Packing and Distribution Center
DBA: USPS
7001 S Central Ave
Los Angeles, CA 90001**

**Case File # 1814630
Case File#: 2017-231-08989
EIN: 41-0760000**

**Corporate Office:
United States Postal Service
475 L'Enfant Plaza SW.
Washington, DC. 20260
Tel. (202) 268-2500**

Point of Contact :

**Tuyet Nguyen, USPS Attorney
USPS Pacific Area, Law Office
300 Long Beach Blvd., Rm. 240
Long Beach, CA 90802
Tel. 562-628-1340
Fax 562-628-1369**

FLSA NARRATIVE REPORT

Reason for Investigation:

This limited investigation was initiated by (b) (7)(E) (b) (6), (b) (7)(C) of United States Postal Service, LA P&DC (USPS). (b) (6), (b) (7)(C) (b) (7)(E) employer failed to provide adequate place for expressing milk as a nursing mother for (b) (6), (b) (7)(C) and another nursing employee under Section 7(r) of the Fair Labor Standards Act (*See Exhibit CA Information, B-7*). This investigation was limited for the two nursing mother employees and (b) (6), (b) (7)(C) (b) (7)(E) (*See Status of Compliance*).

COVERAGE:

Nature of Business: The federal agency, USPS, LA P&DC (United States Postal Service, Los Angeles Packing and Distribution Center), is the largest postage mail distribution center in the western region. The branch location is the main center in Los Angeles, California for receiving, sorting, and distributing

postage mail and packages to other post office locations nationwide. The location branch has over approximately 1,000 employees, and the agency has over 600,000 employees nationwide. The United States Postal Service is covered as a public agency under Section 203 (s)(1)(c) of the Act (*See Exhibit C-1, C-1-b*).

Period of Investigation: This was an investigation from March 22, 2015 to March, 21, 2017.

MODO: Baltimore District Office. (b) (7)(E) (See Exhibit D-2).

MAPPING: USPS P&DC receives postage mail and packages from other states or areas outside of Los Angeles, and vice versa disperse out mail and packages to other regions nationwide, received from Los Angeles post office branches. Pacific Area Law Office, USPS is an internal legal department of the agency that handles all legal matters in the western region of the US, to include California. Ms. Tuyet Nguyen is the attorney representative from the Pacific Area Law Office is handling the inquiries for the USPS, LA P&DC.

Prior History: This branch location does not have prior history of investigation by the WHD.

EXEMPTIONS:

Exemptions from Section 7 (Ineligibility of Sec. 7(r)):

- I. Exemption was tested and was not met for (b) (6), (b) (7)(C) occupation title was a "mail handler," that consisted of manual labor, and was not in a supervisory or administrative position, paid at an hourly rate (*See Exhibit B-7*)
- II. Exemption was tested and was not met for (b) (6), (b) (7)(C) was a customer service representative at the call center that did not have managerial or administrative duties that is directly under a supervisor or manager. In addition, (b) (6), (b) (7)(C) was compensated at an hourly rate (*See Exhibit B-3*)

STATUS OF COMPLIANCE:

Status: United States Postal Service, Los Angeles Packing and Distribution Center (USPS LA P&DC) is west coast's biggest postal distribution center that holds an approximate size of over (b) (4) employees (*See Exhibit C-1-b*). The limited investigation was initiated by (b) (7)(E) a nursing mother, (b) (6), (b) (7)(C) at the warehouse plant department of the center, who (b) (7)(E) employer failed to provide (b) (6), (b) (7)(C) with a reasonable break time and private location to express breast milk for (b) (6), (b) (7)(C) nursing child. During the investigation, a second nursing mother, (b) (6), (b) (7)(C), came forward with (b) (7)(E) denial of (b) (6), (b) (7)(C) nursing mother rights at another department at the LA P&DC. Although both nursing employees are of the same Packing and Distribution Center, they were employed at different, segregated departments that were located and managed apart from each other, under unrelated supervision. (b) (6), (b) (7)(C) reports to (b) (6), (b) (7)(C) direct supervisor, (b) (6), (b) (7)(C), at the plant, and (b) (6), (b) (7)(C) reports to (b) (6), (b) (7)(C), the team supervisor at the call center. When supervisors from the two departments contacted the legal office of the Pacific Area Law Office, USPS on separate occasions, both supervisors were advised to send the nursing mothers to a designated private room at the nurse department, away from each employee's department of work. Additionally, it was directed that the nursing employees are to be provided with the time necessary to pump milk, but if additional time was needed outside of the multiple, paid 15 minute break time, compensation should not occur per regulation. As a result of involvement of three separate departments of the branch agency, three different conferences were held to explore the case, with the presence of legal advisor, Tuyet Nguyen of the Pacific Area Law Office, USPS.

On March 21, 2017, a meeting was held at the USPS LA P&DC with direct supervisor of nursing employee, (b) (6), (b) (7)(C), the call center's department supervisor, (b) (6), (b) (7)(C) and attorney, Ms. Tuyet Nguyen. At the time of the meeting, the nurse's office was assigned as the designated place for (b) (6), (b) (7)(C) to express milk to accommodate a private location. Before (b) (6), (b) (7)(C) was placed in the nurse's office, (b) (6), (b) (7)(C) direct, team supervisor, stated that (b) (6), (b) (7)(C) was first temporarily placed in the bathroom to express milk during (b) (6), (b) (7)(C) break time (*See Exhibit D-3-a*). Later on, (b) (6), (b) (7)(C) was placed in the Union Representative's office to pump milk, where the supervisor stood in front of the door to prevent intrusion from other employees. Due to the need of the office by other employees on regular terms, (b) (6), (b) (7)(C) was ultimately designated to share the nurse's room together with (b) (6), (b) (7)(C) to pump milk. Because the nurse's office was in a different building from (b) (6), (b) (7)(C) place of duty, (b) (6), (b) (7)(C) was given a hall pass Form 7020, according to the agency policy to travel to and from

the nurse department (*See Exhibit D-4*). (b) (6), (b) (7)(C) was told to sign in and out when (b) (6), (b) (7)(C) arrived and left the nurse's office, to keep track of (b) (6), (b) (7)(C) whereabouts for internal security (*See Exhibit D-5*). As directed from the legal department, (b) (6), (b) (7)(C) was provided additional break time necessary, in addition to (b) (6), (b) (7)(C) usual paid 15 minute breaks. It was also advised from the USPS legal department that the extra time outside the paid, 15 minute break, is to be uncompensated off the clock, when needed for break to express milk. (b) (6), (b) (7)(C) has followed the direction accordingly.

In addition, (b) (6), (b) (7)(C) (b) (7)(E) of denied FMLA maternity leave was explored through records review (*See Exhibit B-3*). Facts revealed that (b) (6), (b) (7)(C) did not have 1250 hours of work accrued within the previous 12 month period and no further investigative action was taken as employee did not meet the eligibility requirement (*See Exhibit E-5*).

On March 21, 2017, an initial contact was made with legal advisor, Tuyet Nguyen and (b) (6), (b) (7)(C) supervisor of (b) (6), (b) (7)(C), of the warehouse plant (*See Exhibit C-1, D-3*). Upon initial contact, (b) (6), (b) (7)(C) stated that this was the first incident for the USPS P&DC to encounter a nursing mother employee, no clear guidance or training was provided during the encounter of the incident. (b) (6), (b) (7)(C) said that it is not common at the warehouse plant to have a nursing mother employee, as the nature of the job called for time sensitive manual labor, involving work with machinery time belt and assembly line of operation. (b) (6), (b) (7)(C) continued to explain that since there was no set guideline or procedures to accommodate for nursing mothers, (b) (6), (b) (7)(C) was temporarily placed in one of the many partitioned office desk inside an office room to express milk during (b) (6), (b) (7)(C) paid, 15 minute breaks, until further directions from the legal department was received (*See Exhibit D-3, E-3-h, E-3-i*). Ultimately, legal advice was passed down from the USPS legal office to the supervisor, to send the nursing mothers to the nurse's room for the nursing employees to express milk as needed (*See Exhibit E-3 to E-3-d*). (b) (6), (b) (7)(C) utilized the room to express milk during (b) (6), (b) (7)(C) three, 15 minute paid break time. Although the legal department advised that additional time needed outside of the paid, 15 minute break time is not to be compensated, (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) was paid for the time spent outside (b) (6), (b) (7)(C) paid, 15 minute paid break time for pumping milk for (b) (6), (b) (7)(C) nursing child (*See Exhibit D-3*).

On March 23, 2017, a meeting was held with the nurses of the nurse department, nurse department's supervisor, Thea Hall, attorney, Tuyet Nguyen, and the two nurses, (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C). Through interview notes, it was verified that the two nursing mothers were placed in the same nurse's

office during the set break times without the required privacy among each other (*See Exhibit D-3-b, E-3 to E-3-d*).

Sec. 6: No MW violations were found.

Sec. 7:

Section 7 (Overtime): No violation found.

Section 207(r)(1)(a): All employees expressing milk for her nursing child for 1 year after the child's birth were given time to express milk as needed by the employees (*See Exhibit B-3, B-7, all of D-3*). The proximity location of the area provided for expressing milk was explored and was found to be in adequate distance, within proximity to be accessible per Federal Register Vol. 75, No. 244 II (b)(i).

Section 207 (r)(1)(b): Violations were found for the two nursing mothers, (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C). Employer failed to provide privacy among the coworkers within the private room for use by multiple nursing employees when sharing the private space (*Federal Register Vol. 75, No. 244 II (c)*). At time of site visit, the two nursing employees shared a designated, private room, free from intrusion from other non-nursing employees, but were not shielded for privacy from each of the nursing employees (*See Exhibit B-3, B-4, B-5, B-7, D-3-b*). Additionally, other inadequate places used for expressing milk were found within the investigative period. Through employer's statement and employee interviews, violation of employer's past practice was revealed for (b) (6), (b) (7)(C), as (b) (6), (b) (7)(C) was temporarily placed in a partitioned office desk space to express milk where instances of intrusions from employees occurred (*See Exhibit B-4, B-7, D-3, E-3-h, E-3-i*).

A history of employer's practice of violation was found for (b) (6), (b) (7)(C) supervisor failed to provide (b) (6), (b) (7)(C) an adequate place to pump milk other than the women's restroom, when (b) (6), (b) (7)(C) had returned from maternity leave on January of 2017 (*See Exhibit B-3, D-3-2, E-3-j, E-3-k*).

Section 207 (r)(2): The regulation does not require for the employer to compensate an employee receiving reasonable break time for any work time spent for the purpose of pumping milk. The legal department of the USPS advised the supervisors that the excess time spent in addition to the assigned, paid 15 minute break times were not to be compensated. Although the supervisor of the employee, (b) (6), (b) (7)(C), had followed legal advisement, the supervisor of (b) (6), (b) (7)(C) did not follow the legal advisement and compensated for the additional break time taken by (b) (6), (b) (7)(C). There is no violation for paying the employee for time spent pumping milk.

Sec. 11 (RK): No record keeping violation was found.

Sec. 12 (CL): No CL violations were found.

DISPOSITION:

A final conference was held on 5/22/2017 at the USPS, Pacific Area Office in Long Beach, California (*See Exhibit D-1*). Present at the meeting was the attorney of USPS Pacific Area, Tuyet Nguyen, and representing WHD was WHI (b) (6), (b) (7)(C). A review of the investigative findings, violation remedies made by the employer, and future compliance were discussed. WHI (b) (6), (b) (7)(C) explained that the law requires employers (over 50 employees) to make a room available for use by non-exempted employees taking breaks to express milk for 1 year after the child's birth. And a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public. This room can be private or with partitions/curtains for use by multiple nursing employees. Furthermore, the employer must take steps to ensure the privacy of this space by posting signs to designate when the space is in use or installing a lock on the door. Additionally, breaks must be permitted each time an employee has a need to express milk; each of those time must be a reasonable period of time to include factors of employees' ability to access a suitable space that should be close enough to the nursing employee's work station without prolonged waiting.

WHI reviewed the employer's failure to provide adequate private space for the two nursing mothers at the shared nurse's office without any partitions to give privacy to each employee. It was further discussed of the findings through employee interviews and employer statements that other locations used to place nursing employees in the past were also inadequate.

WHI (b) (6), (b) (7)(C) reviewed the fact that the two employees involved in this investigation were managed under two different policies by their respective supervisors in their departments. (b) (6), (b) (7)(C) was compensated for the duration of time used to express milk past (b) (6), (b) (7)(C) 15 minute breaks while (b) (6), (b) (7)(C) time expressing milk outside of (b) (6), (b) (7)(C) 15 minute breaks were unpaid. WHI (b) (6), (b) (7)(C) advised that although the FLSA does not require for the employer to compensate for the extra time taken to pump milk outside of the assigned paid break, the policy should be consistent across the board. WHI (b) (6), (b) (7)(C) mentioned a consistent policy for future nursing mothers throughout the Pacific Area will be needed. Ms. Nguyen said that although the employees are controlled under different management, she agrees to the need for consistency; the subject

will be presented to her manager.

Ms. Nguyen stated that it was the first time the LA P&DC or any post office in the Pacific Area had nursing mothers involved, and no set guidance was initially available for the supervisors to follow. Ms. Nguyen was aware of violations and reiterated that the proposed sectioning or partitioning to shield the two nursing employees were made right away after the initial meeting.

Additionally, future outreach was offered by the WHI; available for the public and governmental agencies to provide a source of FLSA training or presentation by the Wage and Hour Division for. Ms. Nguyen said she will consider the available training, and will relay the message to her manager. Contact information was provided to Ms. Nguyen for any assistance that the Wage and Hour Division may be able to provide.

(b) (6), (b) (7)(C) Notification: (b) (6), (b) (7)(C) was notified of the result of the investigation on May 22, 2017 via telephone.

Publication Provided: HRG, Fact Sheets #44, 77a, 73.

Recommendation: I recommend this case be closed administratively, (b) (7)(E)
(b) (7)(E)

(b) (6), (b) (7)(C)

Wage and Hour Investigator
5/30/2017

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1814895 Originating District: Sacramento District Office
Local Filing Number: 2017-302-07453 Investigating District: Sacramento District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 02/22/2017
Assignment Date: 02/22/2017

Employer Information

Trade Name: PropertyRadar Legal Name: PropertyRadar, Inc.
Address: 12242 Business Park Dr Ste. 20 EIN: 45-4117505
Truckee, CA96161 County: Nevada
NAICS Code: 541990
No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 08/11/2016 BNPI: 0
To: 02/17/2017 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

(b) (7)(E) COV 203s1a. Per: 8/11/16-2/17/17. Sec207(r)(1)(A) reasonable break time - no violation found. Sec207(r)(1)(B) - Place Sheilded from View and Free from Intrusion - VIOLATION FOUND. The conference room had glass doors/visible when occupied by nursing mother. The utility room provided was not functional bc did not have a flat surface to place the equipment necessary. Remedy: modify utility room to incl table and chair. Sec215a3 - no viol. DIS 4/21/17 ER agree to remedy/ATFC.Rec admin close

WHI Signature: _____ Date: 04/21/2017

Reviewed By: _____ Date: _____

Case ID # 1814895
Case File No. 2017-302-07453

PropertyRadar, Inc.
DBA PropertyRadar
12242 Business Park Drive, Suite 20
Truckee, CA 96161
EIN # 45-4117505

Point of Contact:

Sean O'Toole
12242 Business Park Drive
Suite 20
Truckee, CA 96161
Ph: (530) 550-8801

FLSA NURSING MOTHERS NARRATIVE

Reason for Investigation

This limited investigation was initiated (b) (7)(E) (b) (6), (b) (7)(C) (b) (7)(E) employer PropertyRadar failed to provide (b) (6), (b) (7)(C) with reasonable break times as a nursing mother. (b) (7)(E) a violation of Section 207(r) of the Fair Labor Standards Act when the employer failed to provide a space to the nursing mother that was shielded from view.

COVERAGE

The firm is covered under Section 203(s)(1)(A) of the FLSA. Firm meets ADV threshold as confirmed by Federal Income Tax Returns; the firm grossed revenues of (b) (4) in 2016 and (b) (4) in 2015 (Ex. C-2-a, C-2-b). At least two employees handled goods that have flowed in the stream of commerce such as Staples pens made in China and Acer computer monitors made in China (Ex. C-3).

Sean O'Toole fits the definition of a 203(d) employer because he is the owner, President and Chief Executive

Officer of the firm (Ex. C-2-a, C-2-b). Sean O'Toole handles the day to day operations of the business. Sean O'Toole hires, fires, and supervises all employees of the firm.

Nature of Business

PropertyRadar is a firm that specializes in targeted local marketing in the real estate market. The firm provides clients with public access records software, as well as data and analysis platforms related to real estate Ex. C-4. The firm is headquartered in Truckee, California with no branch establishments.

MODO: The employer is not a multi-unit employer.

ELIGIBILITY

(b) (6), (b) (7)(C) is a nursing mother who needed to express milk for (b) (6), (b) (7)(C) child and it had been less than one year since the child's birth (Ex. B-1-a). (b) (6), (b) (7)(C) is an hourly, non-exempt employee and is subject to Section 207 of the Act (Ex. B-1-a to B-1-b). (b) (6), (b) (7)(C) was paid an hourly rate of (b) (6), (b) (7)(C) and worked as a Researcher (Ex. C-1). (b) (6), (b) (7)(C) is entitled to protection under the nursing mother provisions of Section 207(r).

Period of Investigation: The investigation was limited to 8/11/2016 through 2/17/2017 during the time that the provisions of Section 207(r) were applicable to (b) (6), (b) (7)(C).

SECTION 213 Exemptions - *None claimed*

STATUS OF COMPLIANCE

Prior History: The employer has not been previously investigated by the Wage and Hour Division.

SECTION 207(r)(1)(A): Reasonable Break Time - *No Violation Found*

(b) (6), (b) (7)(C) (b) (7)(E) the manager instructed the nursing mother to only take three break times in the future; two breaks for fifteen minutes each and another break during (b) (6), (b) (7)(C) meal period for thirty minutes (Ex. B-1-a). (b) (6), (b) (7)(C) explained that in the past seven months (b) (6), (b) (7)(C) had been allowed to take paid break times as a nursing mother throughout the day for as long as needed (Ex. B-1-b). The manager explained that (b) (6), (b) (7)(C) was informed that starting on 2/17/17 only two break times would be paid in compliance with state law, and that additional break times needed by the nursing mother could be

taken, but would need to be recorded on her time card and would not be paid (Ex. C-1-a to C-1-c). WHI Lopez explained that break times that were paid due to state regulation or otherwise paid to all employees should continue to be paid. WHI explained that additional break times for nursing mothers beyond those that were paid or considered hours worked still needed to be provided, but were unpaid break times.

SECTION 207(r)(1)(B): Place Shielded from View and Free from Intrusion - Violation Found

The complainant utilized a conference room with glass doors (Ex. C-1-a). The glass doors allowed the interior of the conference room to be visible even when occupied by the nursing mother (Ex. B-1-a). Because the glass doors were not covered and could not prevent others from peering inside the space was found to be out of compliance because it was not shielded from view. (b) (6), (b) (7)(C) explained (b) (6), (b) (7)(C) had also used a utility room but it did not have somewhere to place the equipment needed (Ex. B-1-a to B-1-b). A utility room was not a functional space for a nursing mother because the room did not have a flat surface to place necessary items.

Remedy: The utility room was modified to accommodate the the nursing mother during her break times (Ex. C-1, D-1-b to D-1-d, E-1). The utility room had a solid door and no windows (Ex. D-1-b). The room was shielded from view. The utility room was converted into a functional space by adding a table and chair (Ex. D-1-b, D-1-c). The utility room could be locked from the inside. The only people with the key to the room were the owner and the nursing mother to prevent intrusion from co-workers or the public.

SECTION 215(a)(3) – Retaliation Under the FLSA - No violation found

No violation is found concerning an adverse action taken by an employer resulting from an employee engaging in a protected activity. Andrea Roegiers stopped working for PropertyRadar on 3/9/17 (Ex. D-3-a). (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) decided to quit working there because (b) (6), (b) (7)(C) felt it was a hostile work environment (Ex. B-1-c, D-2). WHI asked if anyone at PropertyRadar attempted to prevent (b) (6), (b) (7)(C) from taking the breaks (b) (6), (b) (7)(C) needed to pump at work. (b) (6), (b) (7)(C) stated that after (b) (6), (b) (7)(E) PropertyRadar allowed (b) (6), (b) (7)(C) to take break times as (b) (6), (b) (7)(C) needed (Ex. B-1-c, D-2). WHI asked (b) (6), (b) (7)(C) to describe why the work environment was hostile. (b) (6), (b) (7)(C) said it was a hostile work environment because three of (b) (6), (b) (7)(C) eight co-workers stopped talking to (b) (6), (b) (7)(C) (B-1-c, D-2). (b) (6), (b) (7)(C) explained that after (b) (6), (b) (7)(E) (b) (6), (b) (7)(C) regarding (b) (6), (b) (7)(C) rights as a nursing mother to take breaks (b) (6), (b) (7)(C) employer PropertyRadar set up a time clock (Ex. D-2). (b) (6), (b) (7)(C) stated that clocking in and out was never an issue for (b) (6), (b) (7)(C) but that three

of the hourly employees that (b) (6), (b) (7)(C) worked with were unhappy and they knew that the time clock was put in place. According to (b) (6), (b) (7)(C) co-workers knew that the time clock was put in place because of the break time issues (b) (6), (b) (7)(C) was having as a nursing mother. (b) (6), (b) (7)(C) stated that there were only three people that (b) (6), (b) (7)(C) talked to and after that they would not talk to (b) (6), (b) (7)(C) anymore (Ex. D-2). (b) (6), (b) (7)(C) explained that the reason (b) (6), (b) (7)(C) believed they stopped talking to (b) (6), (b) (7)(C) was because they were unhappy with having to record their time on the new time clock. (b) (6), (b) (7)(C) explained "Before (b) (7)(E) there was an excel spreadsheet that everyone used. Everyone had their own sheet and would record the time they started working and stopped working. It was on an honor system. So you could come in at 8:05 am and write down that you came in at 8 am. With the new system the time clock keeps track of the exact time that you click the button. I used the new time clock as instructed. They lied to unemployment and said I refused to clock in and out." (Ex. B-1-c, D-2). WHI explained that it was an employer's obligation under federal law to record hours worked and maintain an accurate record of hours worked by employees and this did not meet the definition of retaliation under the Fair Labor Standards Act.

DISPOSITION

A final conference was held on April 21, 2017 with Sean O'Toole, CEO of PropertyRadar, Inc. and Susan Robins, Human Resources Manager for PropertyRadar, Inc. During the final conference the WHI reviewed coverage, the scope of the investigation, the investigative period, exemptions, and the prohibition on retaliation. WHI reminded the employer that the investigation was limited to the (b) (6), (b) (7)(C) (b) (7)(E) regarding the firm's compliance with the nursing mother's provisions under (b) (6), (b) (7)(C) Fair Labor Standards Act.

WHI specifically informed the employer that in the future the firm must comply by:

I. Providing reasonable break times in both frequency and duration as needed by the nursing mother, and a space that is functional, free from intrusion, and shielded from view. WHI explained that a violation occurred because a nursing mother was not provided with an adequate space shielded from view. WHI asked the employer the reason for the violation. Sean O'Toole stated that the employee had requested the conference room even though it had glass doors. WHI asked the employer how the employer planned to come into compliance and a timeline. Sean O'Toole stated that the firm had made modifications to the utility room to make it a functional space by adding a lock, table, and chair and ensuring that the room was shielded from view and free from intrusion. This new space was designated for the nursing mother instead of the conference room. Sean O'Toole stated that the company had come into compliance immediately after learning of the violation and had the space available for the nursing mother by the

nursing mother's next work day (Ex. E-1).

II. Paying all non-exempt employees at least the federal minimum wage of \$7.25 for all hours worked. WHI provided Fact Sheet 22 and 29 CFR Part 785.

III. Paying all non-exempt employees at least T ½ their regular rate for hours worked in excess of 40 in a workweek. WHI provided Fact Sheet 23 and 29 CFR Part 778.

IV. Keeping and maintaining complete and accurate records as required by 29 CFR Part 516. WHI provided Fact Sheet 21 and 29 CFR Part 516.

V. Complying with all applicable CL regulations. WHI provided Fact Sheet 43 and CL 101.

VI. Prohibiting retaliation, discrimination, and any adverse due to an employee engaging in protected activities or exercising their rights under the FLSA.

The employer agreed to future compliance with all provisions of the FLSA.

(b) (6), (b) (7)(C) Notification: (b) (6), (b) (7)(C) was notified that a violation of 207(r)(1)(B) was found and that the employer would designate a new space. (b) (6), (b) (7)(C) confirmed that (b) (6), (b) (7)(C) had been provided with a functional space that was shielded from view and free from intrusion. (b) (6), (b) (7)(C) was informed that there was no violation found under Section 215(a)(3) regarding retaliation.

Recommendation: It is recommended that this case be administratively closed.

Publications Provided: WH-1282 (HRG), WH-1088, WH-1318, FS# 14, FS#44, FS#77A, FS#73, FS#28D

(b) (6), (b) (7)(C)

Wage & Hour Investigator

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1815190 Originating District: Sacramento District Office
Local Filing Number: 2017-302-07470 Investigating District: Sacramento District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 02/24/2017
Assignment Date: 02/24/2017

Employer Information

Trade Name: Faneuil, Inc. Legal Name: Faneuil, Inc.
Address: 7405 Greenhaven Dr. EIN: 04-3253864
County: Sacramento
NAICS Code: 56142
No. Of Employees: (b) (4)
Sacramento, CA95831

Investigation Information

Period Investigated From: 01/23/2017 BNPI:
To: 02/27/2017 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	
Total Violations Under FLSNM:	2						\$0.00

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

(b) (7)(E) FLSANM. Cov: FLSA 3(s)(1)(A); >500k & interstate commerce. SOC: (b) (7)(E) (b) (6), (E) sent home to express milk because ER did not have a functional room. In addition, (b) (7)(E) was informed (b) (7)(E) could only express milk during (b) (6), (E) designated breaks. (b) (7)(E) On 2/27/17, ER became into compliance. FC held on 3/17/17 with Site Director, HR Generalist, and General Counsel via conference call. ER ATC. ECA was discussed. Pubs: HRG, FS#28D, 44, 73, 77A, FLSA Rec: (b) (7)(E), closing.

WHI Signature: _____ Date: 03/30/2017

Reviewed By: _____ Date: _____

Faneuil, Inc.
DBA: Faneuil
EIN: 04-3253864
7405 Greenhaven Drive
Sacramento, CA 95831

Case ID #1815190
Case File #2017-302-07470

Point of Contact:

Alden Eldredge
Senior Vice President, Administration, & General Counsel
2 Eaton Street, Suite 1002
Hampton, VA 23669
Phone: (757) 915-6684
Email: alden.eldredge@faneuil.com

FLSA NURSING MOTHERS NARRATIVE

REASON FOR INVESTIGATION

This investigation was initiated by (b) (7)(E) (b) (6), (b) (7)(C). The investigation was limited to addressing (b) (6), (b) (7)(C), (b) (7)(E) (b) (6), (b) (7)(C), (b) (7)(E) employer did not provide a functional space for (b) (6), (b) (7)(C) to express milk and only allowed (b) (6), (b) (7)(C) to express milk during (b) (6), (b) (7)(C) designated breaks. In addition, (b) (6), (b) (7)(C) was sent home to express milk when the assigned lactation room was not working properly and did not know if (b) (6), (b) (7)(C) employer would pay for the time.

COVERAGE

The subject is Faneuil Inc. dba Faneuil located at 7405 Greenhaven Drive, Sacramento, CA 95831. The business is call center taking phone calls for Covered California. There are several locations for the business, 20+ locations, with a total of 3,783 employees nationwide. During Open Enrollment Season (November – Jan. 15) the business operates from 8am – 8pm, Monday to Friday and 8am – 6pm on Saturday. During Non-Enrollment Season the business operates from 8am -6pm, Monday to Friday. (See Exhibit C-1)

Faneuil, Inc. is a Corporation. The company is incorporated in the State of Delaware on June 18, 2012 (See Exhibit C-2). The headquarters for the business is located at 2 Eaton Street, Suite 1002, Hampton, VA 23669. The officers for the business are as follows: Anna Van Buren – President, Samuel Rehm – Chief Financial Officer, and Alden Eldredge – Secretary. In the last two years, there have been no changes to the legal entity. (See Exhibit C-1).

The business meets enterprise coverage under 203(s)(1). The annual dollar volume for 2014, 2015, and 2016 ranged from (b) (4) (See Exhibit C-4). At this particular location, the company has approximately (b) (4) employees that handle goods that moved in interstate commerce. For example, CSR answer calls within the State of California and outside the State of California. (See Exhibit C-1)

Section 3(d) Employer: The 3(d) employers for the business are the officers listed above. In addition to Parneet Singh who is the Site Director. These individuals run the business on a day to day basis, in addition to set policies and procedures. (See Exhibit C-1)

MODO: There are 20+ locations for the business. The Richmond District Office is the MODO. (b) (7)(E) (See Exhibit D-1)

Period of Investigation: January 23, 2017 to February 27, 2017.

EXEMPTIONS

The company claimed managers, Human Resources, and the Site Director as exempt employees. The exemptions were not tested at this case is limited to (b) (6), (b) (7)(C) (b) (7)(E) (See Exhibit C-1).

(b) (6), (b) (7)(C) is an hourly, nonexempt employee earning (b) (6), (b) (7)(C) per hour and is subject to Section 207 of the Act. (b) (6), (b) (7)(C) is entitled to protection under the nursing mother provision of Section 207(r). (See Exhibit B-1, C-1, D-3)

STATUS OF COMPLIANCE

This is a (b) (7)(E) case. (b) (7)(E) (See Exhibit B-1c).

(b) (6), (b) (7)(C) (b) (7)(E) (b) (6), (b) (7)(C) employer did not provide a functional space to express milk and only

allowed (b) (6), (b) (7)(C) to express milk during (b) (6), (b) (7)(C) designated breaks. (b) (6), (b) (7)(C) (b) (7)(E)

Prior History: A search in WHISARD showed no prior history with Faneuil, Inc.

Section 206 – Minimum Wage – No violation

No violations were found under Section 6. Based on the most recently payroll completed, **February 12, 2017 – February 25, 2017** all non-exempt employees received above the statutory federal minimum wage of \$7.25 per hour. The lowest hourly rate was (b) (4) (See Exhibit D-9)

Section 207(r)(1)(A) - Reasonable break time – Violation

(b) (6), (b) (7)(C) child was born (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) returned to work (b) (6), (b) (7)(C). Upon returning to work, (b) (6), (b) (7)(C) spoke with a supervisor regarding the need to express milk. According to (b) (6), (b) (7)(C), the supervisor was not aware of the policy and asked the Human Resources Generalist. The supervisor informed (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) was allowed to express milk, however only during (b) (6), (b) (7)(C) designated paid rest breaks (See Exhibit B-1). According to the initial conference statement with Human Resources Generalist, Faneuil's policy allows the mother to express milk whenever she needs to (See Exhibit C-1). The policy specifically states, "Employees needing breaks for lactation purposes may use ordinary paid rest breaks or may take other reasonable break time when needed" (See Exhibit D-8Y backside). The investigation revealed that Faneuil's policy was not properly communicated by the supervisor, therefore leaving (b) (6), (b) (7)(C) under the impression that (b) (6), (b) (7)(C) was only to express milk during (b) (6), (b) (7)(C) designated breaks.

Section 207(r)(1)(B) – A place Shield from View and Free from Intrusion – Violation

Faneuil has an assigned lactation room called the Wellness Room to express milk. According to (b) (6), (b) (7)(C) the room has a couple of chairs, a table and a few outlets. The room is not a bathroom or locker room and it is shield from view and free from intrusion of co-workers and the public. Around February 6, 2017, the lock on the door broke however employees were still using the room to express milk as they could open /close the door from inside (See Exhibit D-10a). On February 21, 2017 (b) (6), (b) (7)(C) got stuck in the Wellness Room for approximately 3 hours due to the broken lock. The employer called a locksmith to get (b) (6), (b) (7)(C) out and allowed (b) (6), (b) (7)(C) to go home for the next three days to express milk when needed (See Exhibit B-1, C-1). The employer paid (b) (6), (b) (7)(C) for designated

rest breaks, in addition to the time (b) (6), (b) (7)(C) took to go home to express milk and come back (See Exhibit B-1, C-1, D-4, D-5, D-6, D-7).

On February 24, 2017, Faneuil set up an alternate lactation room to use while they waited on the building management to fix the lock on the Wellness Room. The alternate assigned room was the HRC office. This office has a window in the door which was not completely covered to provide privacy (See Exhibit D-10B). In addition, one of the open outlets fell near two filing cabinets and the space was not functional (See Exhibit D-10c). Furthermore, the second outlet was near a table which stored several computers and the space was not functional (See Exhibit D-10d).

On February 27, 2017, the employer immediately became into compliance once WHI pointed out that the office was not private and a functional space for a mothers to express milk. The employer completely covered both sides of the window with paper so that no one could see in/out even with the light on (See Exhibit D-10e, D-10h). In addition, he cleared off a table near an outlet so that the mother could have a functional space to express milk (See Exhibit D-10f).

On March 3, 2017, the employer reported that the lock on the Wellness Room had been fixed and was available again for nursing mothers to use (See Exhibit D-11).

Section 211 – Record Keeping- No Violations

No violations were found under record keeping. The case was limited to (b) (6), (b) (7)(C) nursing mother's (b) (7)(E) (See Exhibit B-1, C-1)

Section 212 – Child Labor – No Violations

Based on a tour of the establishment, (b) (6), (b) (7)(C) interview, initial conference statement and a review of the firm's most recently completed payroll, it was determined that no child labor violations were (b) (7)(E) The case was limited to (b) (6), (b) (7)(C) nursing mother (b) (7)(E) (See Exhibit B-1, C-1)

Section 216(b) – Liquidated Damages

Liquidated damages were not assessed in this case as there were no back wages due.

DISPOSITION

On March 17, 2017, a final conference was held via conference call with Mary Anne Delaney – Human Resources Generalist, Parneet Singh – Site Director and Alden Eldredge – General Counsel. Present on the behalf of the Department was WHI. The employer was informed that this investigation was limited to the complainant's allegations and covering a period of investigation from 1/23/2017 to 2/27/2017.

WHI discussed the employer's responsibilities under the FLSA Nursing Mother provisions and the findings of the investigation as it related to (b) (6), (b) (7)(C). The employer was notified of the two particular violations found in the case, related to a reasonable break time and a place shield from view and free from intrusion. The employer was informed that the investigation found that there was a miscommunication in regards to when a mother can express milk. Aside from their designed break time, the provision allowed for a mother to express milk as needed. The employer was informed that (b) (6), (b) (7)(C) was informed by (b) (6), (b) (7)(C) direct supervisor that (b) (6), (b) (7)(C) needed to express milk only during designated break time. The employer agreed to provide their front line managers with information regarding break times for expressing milk.

Secondly, the WHI reviewed the issues found regarding functional space and shielded from view with the Wellness Room and HRC Room. As indicated by (b) (6), (b) (7)(C), the lock on the Wellness Room was broken therefore the door was not able to close properly to provide a private space free from intrusions to express milk. The alternate room designated to express milk was the HRC room. This room is an office with a glass window in the door. The glass window was not all covered up, therefore was not shielded from view. The space provided in the room was not functional for the mother, as she would have to pull a chair near an outlet located by two small filing cabinets and have (b) (6), (b) (7)(C) knees up against the handles of the drawers of the filing cabinets.

On the day of the site visit, the employer came into compliance by clearing off a table in the HRC Room so that the mother can use to express milk. The table was near an outlet and the space provided was functional. In addition, the employer closed up the gap in the window, so there is no visibility. Furthermore, the Site Director took extra precaution and covered up the backside of the window in the door.

On March 3, 2017, Human Resource Special informed WHI that the lock on the Wellness Room has been fixed by the building management and it was available to nursing mothers again.

An enhanced compliance agreement was discussed and presented to ensure future compliance. Faneuil will discuss the agreement with executives and additional counsel and provide a response by 3/31/17.

(b) (6), (b) (7)(C) Notification: (b) (6), (b) (7)(C) was notified of the results of the investigation on March 17, 2017 via telephone.

Publications Provided: HRG, Fact Sheets #28D, 44, 73, 77A, and FLSA were provided to the Site Director and Human Resource Generalist in person on 2/27/17.

Recommendation

It is recommended that (b) (7)(E) the case be closed administratively.

Date: March 30, 2017

(b) (6), (b) (7)(C)

Wage and Hour Investigator
Sacramento District Office

WHISARD Compliance Action Report

U.S. Department of Labor Wage and Hour Division

Case ID: 1815634 Originating District: San Diego District Office
Local Filing Number: 2017-315-06627 Investigating District: San Diego District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 03/01/2017
Assignment Date: 03/01/2017

Employer Information

Trade Name: Children's Hospital of Orange County Legal Name: CHOC Children's Hospital
Address: 1201 West La Veta Ave EIN: 95-2321786
County: Orange
NAICS Code: 622310
Orange, CA92868 No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 01/04/2016 BNPI:
To: 09/22/2016 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

Total Violations Under FLSA: 1 \$0.00

WHISARD Compliance Action Report

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

66 hrs - (b) (7)(E) case - ER failed to provide reasonable break time. Covered ER under 203(s)(1)B & ADV >\$500K/yr. ER has 9 locs total - SDDO=MOD0. Vios =Sec 7(r)(1)A - (ER restricted/limited nurse breaks) & Sec 11 RK (ER didn't track all hrs worked as non-exempt EE). No BWs due. 3dER ATC & has already remedied the violations. Advised (b) (6), (b) (7)(C) of findings. Rec case admin closed.

WHI Signature: _____ Date: 08/11/2017

Reviewed By: _____ Date: _____

FLSA NURSING MOTHER NARRATIVE REPORT

Local File No: 2017-315-06627

Case No: 1815634

Legal Name: Children's Hospital of Orange County EIN: 95-2321786
DBA: CHOC Children's Hospital Contact: Sheniece Smith, Esq.
Address: 1201 West La Veta Avenue Ph No: (714)509-3059
Orange, CA 92868
Ph No: (714) 997-3000

COVERAGE

The subject firm is a children's hospital licensed for 202 beds, providing inpatient, outpatient, specialized clinical, and emergency services with approximately (b) (4) employees (see exhibits C-1a, C-1b, and D-21e). The firm is a California Nonprofit Public Benefit Corporation formed on 01/30/1964 with Kimberly C. Cripe, as President (see exhibits C-1a, C-8a, and C-9a through C-9ah).

The subject firm is a named Enterprise/covered employer under Section 3(s)(1)(B) throughout the period of the limited investigation of 01/04/2016 through 09/22/2016. The subject firm is a hospital that is primarily engaged in the care of sick children (see exhibits C-1a, C-1b, and D-21e). Additionally, the ADV for this firm was (b) (4) in 07/01/2016 to 03/31/2017, (b) (4) in 07/01/2015 to 06/30/2016, and (b) (4) in 07/01/2014 to 06/30/2015, well above \$500,000.00 per year (see exhibit C-11).

3(d) employer: Tinoosh Eftekharian, Specialty Clinics Manager, Kathy Kolodge, Director of Ambulatory Services, Veronica Richardson, Operations Manager for CHOC Subspecialties, and Kathryn Van Dijk, Director of Associate Relations are the subject firm's 3(d)ERs under the FLSA as each has the ability to affect the work environment (see exhibits B-1 through B-4, C-2, C-4a through C-4c, C-6a through C-6d, C-7a through C-7c, D-4, D-5, D-6a through D-6k, D-7a through D-7c, D-8a through D-8g, D10a through D-10f, D-11a, D-11b, D-12a through D-12c, D-15a through D-15h, D-16a, D-16b, D-17a through D-17d, and D-20a through D-20h).

Employment Relationship / Misclassification of Independent Contractors: Not Applicable; No

1099 independent contractors found for subject firm (see exhibit C-1b).

MODO: The SDDO is the MODO. The subject firm, which is also the headquarters, is located at 1201 West La Veta Avenue in Orange, CA 92868. The subject firm has 8 other locations which consist of 7 specialty medical clinics in Orange county and 1 in Riverside county (see exhibit C-1a). (b) (7)(E)

(see exhibits D-1a through D-1g).

EXEMPTIONS: Only the exemption status of (b) (6), (b) (7)(C), was reviewed as it pertained to (b) (6), (b) (7)(C) entitlement to protection under Section 7(r) of the FLSA, as this was a limited investigation.

From 01/04/2016 to approximately 04/21/2016, (b) (6), (b) (7)(C) was found to meet the 29 CFR Part 541.100 Executive exemption as a Supervisor CS Cardiology, therefore not entitling (b) (6), (b) (7)(C) to protection under Section 7(r) of the FLSA as (b) (6), (b) (7)(C) was exempt from Section 7 of the FLSA. (b) (6), (b) (7)(C) was paid on a salary basis of approximately (b) (6), (b) (7)(C) gross biweekly, a rate more than \$455 per week (see exhibit D-14a). (b) (6), (b) (7)(C) primary duty was to manage the CHOC Cardiology Clinic, directing the work of 15 staff members (e.g., medical assistants, sonographers, billing clerks, phone assistants, and front desk admin staff). (b) (6), (b) (7)(C) also conducted in person interviews and made recommendations to (b) (6), (b) (7)(C) manager for hiring and terminating of employees (see exhibits B-1, B-2, B-4, D-4, D-5, D-6a through D-6k, D-8a through D-8g, D-10a, D-20a, D-20c through D-20f, and D-20h).

From approximately 04/22/2016 to 05/21/2016 (b) (6), (b) (7)(C) was in transition from the position of Supervisor CS Cardiology (exempt) to LVN Case Manager (non-exempt) in the CHOC Cardiology Clinic. (b) (6), (b) (7)(C) maintained the same/previous biweekly salary pay and did not clock in and out. However (b) (6), (b) (7)(C) duties had changed and (b) (6), (b) (7)(C) was no longer performing the primary duty of supervising the cardiology clinic as (b) (6), (b) (7)(C) had once before. Instead (b) (6), (b) (7)(C) was primarily performing the duties of the non-exempt position of LVN Case Manager. Based upon the totality of the evidence, (b) (6), (b) (7)(C) had lost the 541.100 Executive exemption during this time period, based upon the primary duties (b) (6), (b) (7)(C) performed (see exhibits B-2b, B-4, D-4, D-5, D-8b through D-8g, D-9, D-10a through D-10f, D-11a, D-11b, D-13a, D-13b, D-14a, D-14b, and D-20e through D-20h). Therefore from 04/22/2016 to 05/16/2016 (b) (6), (b) (7)(C) was entitled to protection under Section 7(r) of the FLSA as (b) (6), (b) (7)(C) was not exempt from Section 7 (i.e., an employee who is subject to exceptions from the Section 7(a) OT requirement only, but are otherwise subject to Section 7 [e.g., Section 7(j)], are entitled to protection under Section 7(r) of the FLSA).

From approximately 05/22/2016 to 07/16/2016, (b) (6), (b) (7)(C) held the position of LVN Case Manager in

the CHOC Cardiology Clinic, and was properly classified as a non-exempt employee, therefore entitling (b) (6), (b) (7)(C) to protection under Section 7(r) of the FLSA as she was not exempt from Section 7 (i.e., an employee who is subject to exceptions from the Section 7(a) OT requirement only, but are otherwise subject to Section 7 [e.g., Section 7(j)], are entitled to protection under Section 7(r) of the FLSA). In this position, (b) (6), (b) (7)(C) followed up with patients and families in treatment and care, answering questions and coordinating of follow up appointments. (b) (6), (b) (7)(C) also answered/triaged phone calls. The position did not involve supervising anyone, nor did it require a prolonged course of specialized intellectual instruction. (b) (6), (b) (7)(C) was paid on an hourly basis of (b) (6), (b) (7)(C) and clocked in and out for (b) (6), (b) (7)(C) hours worked (see exhibits B-2b, B-4, D-5, D-7a through D-7c, D-10a through D-10f, D-13b through-13d, D-14b, D-14c, D-15a, and D-15c).

From 07/17/2016 to present, (b) (6), (b) (7)(C) holds the position of LVN II in the CHOC Pulmonary Clinic, and is properly classified as a nonexempt employee, therefore entitling (b) (6), (b) (7)(C) to protection under Section 7(r) of the FLSA as (b) (6), (b) (7)(C) was not exempt from Section 7 (i.e., an employee who is subject to exceptions from the Section 7(a) OT requirement only, but are otherwise subject to Section 7 [e.g., Section 7(j)], are entitled to protection under Section 7(r) of the FLSA). In this position, (b) (6), (b) (7)(C) answered/triaged phone calls and doing prior authorization paperwork for patient referrals and medication refill. (b) (6), (b) (7)(C) was an hourly employee (b) (6), (b) (7)(C) and clocked in and out for (b) (6), (b) (7)(C) hours worked (see exhibits B-3, B-4, D-4, D-5, D-11a, D-11b, D-12a through D-12c, D-15a through D-15h, D-16a, D-16b, and D-17a through D-17d).

STATUS OF COMPLIANCE

History: A search in WHISARD indicated that the subject firm has no prior investigations.

Reason for Investigation: This limited investigation is the result of (b) (7)(E) (b) (6), (b) (7)(C) (b) (7)(E) the employer failed to provide reasonable break time. (b) (6), (b) (7)(C) (b) (7)(E) (b) (6), (b) (7)(C) was a nursing mother who needed to express breastmilk for her child who was under the age of 1 year (date of birth 09/23/2015) (see exhibit B-4b).

(b) (6), (b) (7)(C) claimed that the employer failed to provide reasonable break time, limiting (b) (6), (b) (7)(C) to 20 minutes to nurse, 3 times per workday to coincide with (b) (6), (b) (7)(C) 1 meal and 2 rest breaks. This was documented in coaching logs by 3dERs (see exhibits B-4, D-7a, D-8c through D-8g, D-16a through D-16d, and D-20h). However based upon IC notes, employee interview statements, and documents,

previous to this, (b) (6), (b) (7)(C) had taken extended breaks (up to 2hrs, several times per workday), not always communicating to (b) (6), (b) (7)(C) staff and managers (b) (6), (b) (7)(C) whereabouts and the reasons for being unavailable, while holding the position of Supervisor of the Cardiology Clinic (i.e., exempt) prior to taking and also returning back from (b) (6), (b) (7)(C) maternity leave. As a result, there was a breakdown in communication, performance issues, and the needs of the office/patients were not being met (see exhibits B-1, B-2, B-4, D-4, D-7a, D-7b, D-8a through D-8g, D-11a, D-11b, D-20a, and D-20h through D-20k).

Therefore, when (b) (6), (b) (7)(C) changed from an exempt position to a non-exempt position within the Cardiology Clinic, the 3dERs had conversations with (b) (6), (b) (7)(C) resulting in limiting (b) (6), (b) (7)(C) breaks to lactate to 20 minutes 3 times per workday, to coincide with (b) (6), (b) (7)(C) meal and rest breaks. Much of this was due to (b) (6), (b) (7)(C) past performance as an exempt manager. The 3dERs didn't compartmentalize/separate (b) (6), (b) (7)(C) past performance with (b) (6), (b) (7)(C) need for reasonable break times to nurse in the workday, unknowing to the exact amount of time/duration for each lactation break and frequency per workday.

By the time (b) (6), (b) (7)(C) transferred to the Pulmonary Clinic, (b) (6), (b) (7)(C) maintained the same anticipated nursing break schedule, feeling uncomfortable to speak to the 3dERs based on past discussions (see exhibits B-4, D-16a through D-16d, D-20, and D-21k).

(b) (6), (b) (7)(C) states that in (b) (6), (b) (7)(C) non-exempt position (b) (6), (b) (7)(C) made the same wages as in (b) (6), (b) (7)(C) prior exempt position and that (b) (6), (b) (7)(C) isn't owed any back pay. (b) (6), (b) (7)(C) doesn't want any other nursing mother employee(s) to experience the same restricted/limited nursing breaks (b) (6), (b) (7)(C) had as a non-exempt employee of the subject firm (see exhibit B-4).

WHI (b) (6), (b) (7)(C) contacted (b) (6), (b) (7)(C) on 08/11/2017 and advised (b) (6), (b) (7)(C) via voicemail message of the case findings/violations.

Violations found: The employer failed to provide reasonable break time. The employer also failed at the beginning to keep record/track of (b) (6), (b) (7)(C) hours worked as a non-exempt employee (i.e., LVN Case Manager).

On 04/12/2017 WHI (b) (6), (b) (7)(C) made an announced visit to the establishment, conducted the IC, interviewed employees, and toured the establishment, including the locations (b) (6), (b) (7)(C) had expressed (b) (6), (b) (7)(C) breastmilk.

Section 6: No apparent Minimum Wage violation found. Based on IC notes, employee interview statements, and time and pay records, the non-exempt employees were paid at least the Federal

minimum wage rate of \$7.25 per hour. In addition, there were no illegal deductions found that would bring the rate below the Federal MW of \$7.25 per hour (see exhibits A-1a through A-1i, B-1 through B-4, C-1c, and D-14a through D-14e).

Section 7: No apparent Overtime violation found, based on IC notes, employee interview statement, and time and pay records (see exhibits A-1a through A-1i, B-1 through B-4, C-1b, D-3a through D-3aa, D-13a through D-13d, and D-14a through D-14e).

Section 7(r)(1)(A) – Reasonable Break Time to Express Breastmilk: Violation found. Based on interviews with (b) (6), (b) (7)(C), 3dERs, employees, and the review of documentation (e.g., emails, coaching logs, competency assessments), it was determined that the 3dERs restricted/expected (b) (6), (b) (7)(C) to nurse only during her 1 meal and 2 rest breaks during the workday. Additionally the 3dERs had (b) (6), (b) (7)(C) identify in advance a defined amount of time (i.e., 20 minutes, then later 15 minutes) needed for the break time to nurse, to coincide with her break times (see exhibits B-4, D-8c through D-8g, D-16a, D-16b, D-17b, D-20h, and D-21k).

Section 7(r)(1)(B) – A Place Other than a Bathroom, Shielded from View and Free from Intrusion to Express Breastmilk: No violation found (see exhibits B-1 through B-4, D-7a, D-7b, D-18, D-19a through D-19m, D-20c, and D-20d).

Section 11: Violation was found as the employer failed to keep record/track of all (b) (6), (b) (7)(C) hours worked as a non-exempt employee (i.e., LVN Case Manager) (see exhibits B-4, D-13a, and D-13b).

Section 12: No Child Labor violation found (see exhibits B-4b and C-1b).

Section 15(a)(3) – Retaliation: No Violation found (see exhibit B-4).

DISPOSITION

On 08/11/2017, WHI (b) (6), (b) (7)(C) held a final conference at the Orange Area Office with Sheniece Smith, Esq., Associate General Counsel for CHOC Children's Hospital, and Kathryn Van Dijk, Director Of Associate Relations for CHOC Children's Hospital.

WHI (b) (6), (b) (7)(C) discussed in detail the provisions to the FLSA under Sections 6, 7, 11, 12, and 15.
WHI (b) (6), (b) (7)(C) discussed the subject firm's responsibilities as a covered employer during the

limited investigative period of 01/04/2016 to 09/22/2016 under the FLSA and the FLSA Nursing Mother Provisions and the findings of the investigation as it related to (b) (6), (b) (7)(C). Sheniece Smith and Kathryn Van Dijk were informed that the subject firm was in violation of Section 11 of the FLSA as a result of not keeping record/track of all (b) (6), (b) (7)(C) hours worked as a non-exempt employee. Sheniece Smith and Kathryn Van Dijk were also informed that the subject firm was in violation of Section 7(r)(1)(A) – Reasonable Break Time to Express Breastmilk as a result of restricting/expecting (b) (6), (b) (7)(C) to nurse only during (b) (6), (b) (7)(C) 1 meal and 2 rest breaks during the workday.

Sheniece Smith and Kathryn Van Dijk acknowledged that the subject firm failed to keep track of all (b) (6), (b) (7)(C) hours worked as a non-exempt employee and to provide reasonable break times to nurse. Sheniece Smith and Kathryn Van Dijk advised WHI (b) (6), (b) (7)(C) that they have already created and began presenting trainings to the management staff of all levels about HR principles, including specifically about FLSANM. The subject firm has filled the position of Leave Management Coordinator who provides consistent communication to the managers about all types of leave and what is needed/applicable for each. The subject firm has updated its lactation policy with the requirements in accordance to the law and placed it on its intranet. The subject firm's HR service center has staffed more personnel and resources available to handle more effectively and efficiently time keeping issues and status changes (e.g., a change from an exempt to a non-exempt position), so that the paperwork and record keeping are handled timely.

WHI (b) (6), (b) (7)(C) discussed the Section 15 Prohibited Acts, and Sheniece Smith and Kathryn Van Dijk agreed to comply with the FLSA.

CMP and LD: N/A

Publications provided: FLSA, FMLA, FLSA HRG, Regulations: 516, 541, 578, 778, US DOL WHD Fact Sheets #28D, #44, #73, and #77a, and US DOL WHD Frequently Asked Questions – Nursing Mothers

RECOMMENDATION: I recommend this case be administratively closed.

(b) (6), (b) (7)(C)
Wage & Hour Investigator

August 11, 2017

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1825300 Originating District: Sacramento District Office
Local Filing Number: 2017-302-07620 Investigating District: Sacramento District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 06/15/2017
Assignment Date: 06/15/2017

Employer Information

Trade Name: California, State of Legal Name: Corrections and Rehabilitation, Department
Address: 23370 Road 22 EIN: 68-0383247
County: Madera
NAICS Code: 0911
Chowchilla, CA93610 No. Of Employees: 1200

Investigation Information

Period Investigated From: 10/17/2016 BNPI:
To: 12/04/2016 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

Spin off of (b) (7)(E) case ID 1813837 FLSANM. COV: FLSA 203(s)(1)(C)-Public agency EX: N/A. SOC: FLSANM Vios- 207(r)(1)(B= ER failed to provide set location for (b) (7)(E) to utilize. FC held 08/10/17 @ est w/Corryn Pierini (Chief Support Executive) and Nancy Heskett (Analyst). ATFC. Pubs: See narrative.

WHI Signature: _____ Date: 08/23/2017

Reviewed By: _____ Date: _____

State of, California
Corrections and Rehabilitation, Department of
Db a Central California Women's Facility
EIN: 68-0383247
23370 Road 22
Chowchilla, CA 93610

Case ID #1825300

Case File #2017-302-07620

Points of Contact:
Ms. Deborah Nelson (Labor Relations Analyst)
23370 Road 22
Chowchilla, CA 93610
(559) 665-5531 ext. 5403

Fair Labor Standards Act- Nursing Mothers Narrative

COVERAGE:

The Department of Corrections and Rehabilitation (CDCR) is a State law enforcement agency behind the U.S. Customs and Boarder Protection (CBP) which is an arm of the Department of Homeland Security (DHS). The CDCR is headquartered at 1515 S St, Sacramento, CA 95811 and is responsible for the operation of the California state prison and parole systems including the Central California Women's Facility located on 23370 Road 22, Chowchilla, CA 93610. The Central California Women's Facility is a female institution with over 2800 inmates. It was first opened in 1990. The Warden of the institution is Mr. Derrell Adams and the Chief Executive Officer for the institution's Health Care Department is Mr. Jimmy Webster. Facility currently employs over 1200 civil service employees (See exhibits C-1 and C-4). As a public agency, The Department of Corrections and Rehabilitation (CDCR) is covered under Section 203(s)(1)(C).

Section 203(d) Employer: Mr. Derrell Adams is the warden for institution and is responsible for running facility. Mr. Jimmy Webster is the Chief Executive Office responsible for the day to day operations on the

Health Care Department (See exhibit C-1).

Mapping:

The California Department of Corrections and Rehabilitation (CDCR) is a State law enforcement agency behind the U.S. Customs and Boarder Protection (CBP) which is an arm of the Department of Homeland Security (DHS). CDCR is headquartered at 1515 S St, Sacramento, CA 95811 and is responsible for the operation of the California state prison and parole systems. The Central California Women's Facility located in Chowchilla, CA is one of the 35 State facilities ran and controlled by the CDCR. In addition to employing direct State employees, CDCR utilizes a vendor management company (Management Solutions) to recruit and employ temporary workers from various staffing agencies including All Health Services Corporation (See exhibits C-1 and C-4).

Period of Investigation: 10/17/2016 to 12/04/2017. Investigation was limited to (b) (6), (b) (7)(C) and the time (b) (6), (b) (7)(C) worked at the Central California Women's Facility- Health Care Department.

Prior History: The Department of Corrections and Rehabilitation (CDCR) has been investigated by the Wage & Hour Division on multiple times. However, this is the first time they are investigated in relation to the Central California Women's Facility located in Chowchilla, CA (See exhibit D-18).

Main Office District Office (MODO): The legal name of the public agency is the California Department of Corrections and Rehabilitation (CDCR). Headquarter is located at 1515 S St, Sacramento, CA 95811 which is within the Sacramento District Office. (b) (7)(E) (See exhibit D-1).

Joint Employment:

All Health Services Corporation & California Department of Corrections and Rehabilitation dba Central California Women's Facility:

An analysis of the factors set forth in 29 CFR 500.20(h)(5)(iv)(A) through (G) and 29 CFR 791 determined that a joint employment relationship **does** exist between All Health Services Corporation & California Department of Corrections and Rehabilitation dba Central California Women's Facility.

The following joint employment factors were met: **A, B, C, E and F**

Factor Met – The power to either alone or through control of the employer to direct, control or supervise the workers. All Health Services Corporation recruits and hires the temporary medical employees (“temps”). Once temps are placed at the Central California Women's Facility (CCWF), the CCWF directs, controls, and supervises the temps through their direct supervisors. However, if a temp is unable to report to work, the temp is required to contact All Health Services Corporation via telephone and All Health Services Corporation will inform his direct client Management Solutions who then informs their client CCWF. Temps placed at CCWF are directly controlled by a number of CCWF's supervisors who report to and get instructions from CCWF. CCWF determines the employee's work schedule and buildings where employee is assigned to work each day (See exhibits B-1, B-3, B-5, B-6, B-7, B-10 and C-1 through C-3).

Factor Met – The power either alone or in addition to another employer, directly or indirectly, to hire or fire, modify the employment conditions, or determine the pay rates or the methods of wage payment for workers. Central California Women's Facility (CCWF) has complete power to cancel temp's contract at any point and have the temp removed from job assignment with or without an explanation. All CCWF has to do is request removal through their contracted vendor management company; Management Solutions (MS), and MS will communicate with All Health Services to inform of the temp's removal. All Health Services has a written contract with Management Solutions whom through his sub-contractors provides health care professionals to the California Department of Corrections and Rehabilitation. The written contract between Management Solutions and All Health Services states that due to the nature of job (temporary), their client (CCWF) has the right to stop job assignments due to no longer needed or due to poor performance (See exhibits C-1 through C-3, D-13-c and D-13-d). However, CCWF or Management Solutions do not have a say in whether a temp continues to work at All Health Services. Management Solutions and the California Department of Corrections and Rehabilitation decide the contract amount paid to All Health Services for proving a “temp” but All Health Services decides and sets the pay rate and the method of payment for “temp” (See exhibits C-1 through C-3 and D-13-v).

Factor Met – The degree of permanency and duration of the relationship of the parties. All Health Services has had a written contract with Management Solutions since 2015. Even though All Health Services does not have a direct contract with the California Department of Corrections

and Rehabilitation or the Central California Women's Facility, they have been providing temporary medical staff to them through Management Solution since 2015 (See exhibit C-1).

Factor Not Met – **The extent to which the services rendered by the workers are repetitive, rote tasks requiring skills which are acquired with relatively little training.** Temps placed to work at the CCWF through Management Solutions are required to have a certificate from the State of California Nursing Board which is obtained by taking a short course, doing clinical and passing a test. Temps are also required to have at least one year of experience in the medical field. Training is not provided by any of the agencies involved (See exhibits B-3, B-5, B-10 and C-1 through C-3).

Factor Met – **Whether the activities performed by the workers are an integral part of the overall business operation of the employer.** All Health Services provides nursing staff “temp” to CCWF through Management Solutions. Nursing staff assist facility's inmates who are being mentally treated or observed. Nursing staff/temps' work is an integral part of the overall business operations of the State facility because they have a legal obligation to keep inmates safe and healthy at all times (See exhibits B-1, B-6, B-7, C-1 and C-2).

Factor Met – **Whether the work is performed on CCWF's premises, rather than on premises owned or controlled by another business entity.** Temps work at the Central California Women's Facility which is 100% controlled by the California Department of Corrections and Rehabilitation (See exhibits B-3, B-5, B-10 and C-1 through C-3).

Factor Not Met – **Whether CCWF undertakes responsibilities in relation to the workers which are commonly performed by employers.** All Health Services administers the workers' compensation policies. All Health Services runs payroll and pays the temps. Temps fill out a CCWF's timecard that is then provided to All Health Services through Management Solution. Any necessary materials, tools and equipment used in the medical department are provided by CCWF (See exhibits C-1 through C-3).

EXEMPTIONS:

No exemptions claimed or tested.

Eligibility: (b) (6), (b) (7)(C) was an hourly, non-exempt employee and was subject to Section 207 of the Act. (b) (6), (b) (7)(C) was paid an hourly rate of (b) (6), (b) (7)(C) and worked as a Certified Nurse Assistant therefore entitled to protection under the nursing mother provisions of Section 207(r) (See exhibits B-10 and C-3).

STATUS OF COMPLIANCE:

Reason for Investigation: This limited investigation was initiated as a spin off case of case ID# 1813837. (b) (7)(E) under joint employer All Health Services Corporation. (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) worked for temporary employment agency; All Health Services and was placed at the Central California Women's Facility located in Chowchilla, CA to work as a Certified Nurse Assistant. (b) (6), (b) (7)(C) (b) (7)(E) was not always provided with the necessary breaks for expressing (b) (6), (b) (7)(C) breast milk and that (b) (6), (b) (7)(C) was required to pump in a bathroom. (b) (6), (b) (7)(C) further stated that (b) (6), (b) (7)(C) was retaliated against and let go due to requesting time for expressing (b) (6), (b) (7)(C) breast milk. (b) (7)(E)

(b) (6), (b) (7)(C) (b) (7)(E) (See exhibit D-2). (b) (6), (b) (7)(C) was a nursing mother who needed to express milk for (b) (6), (b) (7)(C) child and it had been less than one year since the child's birth (See exhibits B-10 and C-3).

A concurrent Fair Labor Standards Act –Nursing Mothers investigation was conducted on joint employer All Health Services Corporation (See case ID#1813837).

The investigation disclosed three parties involved in the recruitment, hiring, supervision and termination of temporary health care employees such as (b) (6), (b) (7)(C). The following explains relationship between the three:

All Health Services (staffing agency) recruits and hires health care employees such as registered nurses, licensed vocational nurses, license psychiatrics, certified nurse assistants and medical assistants. All Health Services has a contract with two parties and provides them temporary health care employees to fulfill their client's needs. All Health Services provides employees that are placed to work at different correctional

facilities in the state of California through their contract with Management Solutions. All Health Services also provide employees that are placed at different hospitals and medical facilities through their contract with Contra Costa County. All Health Services decides the hourly rate that is paid to employees and runs payroll for wages. A weekly timesheet is completed by employees at the State facility; the facility provides this to Management Solutions and Management Solutions forwards this to All Health Services. All Health Services is neither involved with the supervising/directing of employees' daily activities nor the employee's work schedule; this is decided by the State facility where the employee is placed (See exhibits B-3, B-5, C-1 through C-3, D-13 and D-14).

Management Solutions (vendor management company) has many sub-contractors (staffing agencies) that provide health care professionals to their exclusive client; the California Department of Corrections and Rehabilitation (CDCR). Management Solutions has a contract with CDCR to fulfill any health care staffing needs such as temporary releases or temporary assignments for all the facilities in the state of California. Management Solutions has website where the state facilities post orders requesting services of health care employees. Staffing agencies such as All Health Services have access to this website and are able to see any existing opportunities. Through this same web site, staffing agencies are able to submit their applicant's resume and license information. Management Solutions' job is to pre-screen the resumes to make sure applicants qualify for position based on state's facility requirements. If an applicant qualifies, Management Solutions follows up with the applicant via telephone to verify applicant is informed of the assignment dates and duties as well as to verify credentials, nursing state license and experience. If employee qualifies his/her resume is forwarded (on a first come first served basis) to the state facility requesting the employee. At that point the facility responds to Management Solutions with a "Yes" or "No". If the response is a "Yes", Management Solutions communicates back with the staffing agency to inform them that the facility said they want to move forward with employee and request staffing agency to upload additional documents such as background check. Once that is done, the employee is given a start date (See exhibits B-3, B-5, C-1 through C-3 and D-13).

Management Solutions does not discuss pay with employees. Management Solutions pays the staffing agency a standard bill rate which is an hourly rate based on the job classification the employee will be performing. Bill rates are set and listed in the already established contract between the California Department of Corrections and Management Solutions. The staffing agency decides what hourly rate the employee will be paid based on the work he/she will be performing. According to Management

Solutions, individuals are not offered/given a permanent position with the facility, the assignment is temporary and the facility has the right to end assignment at any point with or without a cause (See exhibits B-3, B-5, C-1 through C-3, D-13, D-13-c and D-13-d).

Management Solutions is not involved in the daily activities or work schedule of employees; the State facility does. Management Solution simply acts as an agent for the CDCR who is responsible for the communication between All Health Services and CDCR. The state facility contacts Management Solutions with any issues in relation to the worker and Management Solutions communicates this to the staffing agency. If a State facility decides to stop an assignment due to “no longer needed” or “poor performance”, the facility sends a notice to Management Solutions explaining the facility's reasons and Management Solutions forwards this information to the staffing agency. Management Solutions does not have a say on what temp is chosen and what temp is removed. They only pass the message from one side to the other (See exhibits B-3, B-5, B-7, C-1 through C-3 and D-13-d).

The State facility has complete control over the employee's daily duties, assignment of responsibilities, work schedule and has the final say when deciding who and when to use and/or terminate a service/temp contract. If a job assignment is ended due to the employee's poor performance, the State facility fills out a form called DNR (Do not return) which is provided to Management Solutions. A DNR prevents Management Solutions from recruiting that specific employee back to work at any of the State facilities (See exhibits B-3, B-5, B-7, C-1 through C-3 and D-13-d).

SECTION 207(r)(1)(A): Reasonable Break Time - No Violation Found

When an inmate attempts to hurt herself or threatens to hurt herself, the State facility is required to place inmate under “one-to-one suicide watch” until she is seen and/or released by a psychiatric. The complainant's job duties were to sit outside of an inmate's medical room that was being treated or observed and be vigilant of inmate's activities through a small glass window to prevent inmate from hurting herself or committing suicide. The facility is legally required to keep an eye on these inmates at all time and therefore, an employee who is assigned to this duty is unable to walk away without being relieved by another employee. (b) (6), (b) (7)(C) (b) (7)(E) (b) (6), (b) (7)(C) was unable to take the necessary breaks to express (b) (6), (b) (7)(C) breast milk due to not finding co-workers willing/able to relieve (b) (6), (b) (7)(C) from duty on a timely basis (See exhibits B-1, B-3, B-6, B-9, B-10 and C-3).

Based on the interviews taken from a number of supervisors, employees and (b) (6), (b) (7)(C), it was determined that (b) (6), (b) (7)(C) failed to properly communicate with All Health Services, (b) (6), (b) (7)(C) immediate supervisors at the State facility, (b) (6), (b) (7)(C) co-workers and the human resources department located in the State Facility to address (b) (6), (b) (7)(C) needs and issues regarding the taking of the breaks (b) (6), (b) (7)(C) needed to express (b) (6), (b) (7)(C) breast milk. (b) (6), (b) (7)(C) stated (b) (6), (b) (7)(C) did not communicate with All Health Services to make them aware of the problem (See exhibits B-3, B-10 and C-3). Also, when (b) (6), (b) (7)(C) started (b) (6), (b) (7)(C) job assignment at the Central California Women's Facility (CCWF), (b) (6), (b) (7)(C) met with human resources personnel (name unknown) to discuss process for lactation accommodations and was instructed to contact human resources personnel if (b) (6), (b) (7)(C) ran into any issues relating taking the necessary breaks for expressing breast milk which (b) (6), (b) (7)(C) failed to do (See exhibits B-8 and B-10). Interview statements also disclosed that (b) (6), (b) (7)(C) was allowed to take the breaks (b) (6), (b) (7)(C) needed as frequent as needed and was given instructions to communicate with supervisors if (b) (6), (b) (7)(C) wasn't able to find someone available to relieve (b) (6), (b) (7)(C) so that the supervisor on shift could come relieve (b) (6), (b) (7)(C) but (b) (6), (b) (7)(C) failed to do that as well (See exhibits B-1, B-4, B-6, B-7, B-8, B-9, and B-10). If (b) (6), (b) (7)(C) would have properly communicated with any of three mentioned above (staffing agency, supervisors, HR) the issue would have been resolved on a timely manner.

SECTION 207(r)(1)(B): Place Shielded from View and Free from Intrusion - Violation Found

Even though supervisors expressed supportiveness to accommodate (b) (6), (b) (7)(C) necessary breaks for expressing breast milk, they failed to designate an available set location for (b) (6), (b) (7)(C) to utilize. (b) (6), (b) (7)(C) was informed (b) (6), (b) (7)(C) could use any available spaces- patient's room, supervisor's office, storage room, break room, and/or bathroom. However, (b) (6), (b) (7)(C) was at times unable to find a space available at the time of need. (b) (6), (b) (7)(C) stated most of the locations were locked during night time and (b) (6), (b) (7)(C) was forced to use the bathroom which is not an acceptable location under the nursing mother's provision. When investigator visited facility, supervisor (b) (6), (b) (7)(C) disclosed two places utilized by complainant to express milk; unoccupied patient's rooms and his office. Both of these locations were shielded from view and free from intrusion from co-workers. Supervisor (b) (6), (b) (7)(C) was unable to located storage room or breakroom described by (b) (6), (b) (7)(C) therefore they were not inspected by the investigator (See exhibits B-1, B-2, B-4, B-6, B-7, B-8, B-9, B-10 and C-1).

On March 30, 2017 during the initial conference held with Marcia Contreras (Staff Services Manager), a designated lactation room was disclosed to the investigator. Investigator inspected the lactation room

located in the administration building during the tour of the establishment. This room is a locker-bathroom-lactation area. The lactation area is technically formed of a red sofa sitting next to a set of lockers located in the same room as the toilets. Designated lactation room does not meet the requirements specified under the act due to room failing to have a wall with a door between the lactation area and the toilets/lockers area. In addition, lactation area does not have a flat surface other than the floor to place the pump as required under the act. The administration department is closed during the night and not accessible to the night shift workers, therefore, not used by (b) (6), (b) (7)(C) (See exhibit C-1).

Section 215(a)(3) – Retaliation Under the FLSA: No Violation found.

(b) (7)(E) . A review of the events that occurred is as follows (See exhibits B-1 through B-10, C-1 through C-3 and D-2 through D-15):

(b) (6), (b) (7)(C) (b) (7)(E) the Central California Women's Facility terminated (b) (6), (b) (7)(C) employment/contract due to employer being unwilling to accommodate (b) (6), (b) (7)(C) with the needed breaks to express (b) (6), (b) (7)(C) breast milk. (b) (6), (b) (7)(C) stated that having co-workers pulled away from their assigned work to come relieve (b) (6), (b) (7)(C) was difficult and created conflict among co-workers (See exhibit B-10). (b) (6), (b) (7)(C) states that on December 5, 2016 as (b) (6), (b) (7)(C) was being walked off the premises by supervisor (b) (6), (b) (7)(C) disclosed to (b) (6), (b) (7)(C) that the reason why (b) (6), (b) (7)(C) was being let go was because (b) (6), (b) (7)(C) was a no call/no show on 12/2/2017. (b) (6), (b) (7)(C) also (b) (7)(E) (b) (6), (b) (7)(C) in confidence expressed the following to (b) (6), (b) (7)(C) “Between you and me, it's been difficult to accommodate you here”, “You should try to work at the men's prison as that location is able to accommodate your nursing breaks better”. (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) right away contacted All Health Services to inquire about working for the Valley State Prison (men's prison) but (b) (6), (b) (7)(C) was informed that there were no open opportunities at that facility. (b) (6), (b) (7)(C) contacted Tiffany Garcia (recruiter) from All Health Services and explained (b) (6), (b) (7)(C) had been walked off from facility and was told (b) (6), (b) (7)(C) contract had been terminated (See exhibit B-10). Ms. Tiffany contacted Management Solutions and spoke with (b) (6), (b) (7)(C) regarding the termination of (b) (6), (b) (7)(C) work assignment. (b) (6), (b) (7)(C) stated that the facility had submitted a DNR Summary (Do not return) stating (b) (6), (b) (7)(C) service contract had been terminated due to the following circumstances which were claimed to have violated “The Department Operations Manual (DOM)”, under the Employees, Contractors and Volunteers (See exhibits B-3, C-3 and D-3):

(b) (6), (b) (7)(C) had a poor attendance pattern, claiming (b) (6), (b) (7)(C) had been coming in late to work from November 14, 2016 to the end of (b) (6), (b) (7)(C) contract.

(b) (6), (b) (7)(C) attitude issues, claiming (b) (6), (b) (7)(C) attitude towards other staff members had been very unprofessional causing a non-team player working environment.
(b) (6), (b) (7)(C) was a no call no show on December 2, 2016 and called in sick on December 3, 2016.

Even though (b) (6), (b) (7)(C) stated reasons stated above were false, the Central California Women's Facility (CCWF) provided copies of timesheets substantiating (b) (6), (b) (7)(C) tardiness pattern. Timesheets indicated that (b) (6), (b) (7)(C) had been 5-30 minutes late on 8 occasions between November 8, 2016 and December 4, 2016 (See exhibits D-6). The CCWF also provided a copy of (b) (6), (b) (7)(C) work schedule along with a copy of the facility's visitor registration sheet showing (b) (6), (b) (7)(C) was scheduled to work on December 2, 2016 and did not signed in to enter the facility, confirming (b) (6), (b) (7)(C) did not work on such date (See exhibits D-5, D-6-h, D-7 and E-1). CCWF did not have any written documentations regarding alleged attitude issues claiming such records are not kept for contract-workers as they are not considered to be state employees. CCWF claimed (b) (6), (b) (7)(C) had been verbally disciplined for tardiness and attitude issues (See exhibits B-1 and B-7). However, an indication of (b) (6), (b) (7)(C) undesirable attitude towards supervisors and co-workers was demonstrated through interview statements taken from both (b) (6), (b) (7)(C) immediate supervisors and co-workers (See exhibits B-1, B-2, B-4, B-7 and B-8). Wage and Hour Investigator interviewed supervisor (b) (6), (b) (7)(C) to obtain information regarding conversation with (b) (6), (b) (7)(C) on the last day of employment (b) (7)(E) (See exhibit B-7).

All Health Services attempted to look for other work options and offered (b) (6), (b) (7)(C) a work opportunity with the Corcoran State Facility only a few days after (b) (6), (b) (7)(C) contract with CCWF had ended. (b) (6), (b) (7)(C) rejected work opportunity due to longer commute (See exhibits B-3, B-10 and C-3).

On May 18, 2017, (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) had been assigned to work at the Valley State Prison (men's prison) located in Chowchilla, CA and that (b) (6), (b) (7)(C) had started orientation on 5/17/2017 (the day before). (b) (6), (b) (7)(C) added that (b) (6), (b) (7)(C) had informed All Health Services that (b) (6), (b) (7)(C) was no longer interested in expressing breast milk because (b) (6), (b) (7)(C) didn't want any issues and also because (b) (6), (b) (7)(C) child was turning one year old on June 14, 2017 which was one month away (See exhibit B-10-f and B-10-g).

On July 11, 2017, (b) (6), (b) (7)(C) contacted Investigator to get an update on case and also to disclose that (b) (6), (b) (7)(C) had been let go from the Valley State Prison right after (b) (6), (b) (7)(C) completed (b) (6), (b) (7)(C) orientation (5/19/2017).

(b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) was assigned to start work on 5/22/2017 but was not allowed to enter the facility once (b) (6), (b) (7)(C) arrived. (b) (6), (b) (7)(C) contacted Tiffani Garcia (recruiter for All Health Services) and explained situation (See exhibit B-10-h). Tiffani contacted Management Solutions and spoke with (b) (6), (b) (7)(C) who stated that Valley State Prison had changed their mind and changed request to “No longer Needed” and also explained that (b) (6), (b) (7)(C) was on a “Do Not Return” status with all state facilities therefore, unable to be placed to work at any of the state's facilities (See exhibit B-3-d). Based on notes provided by Tiffany, it was concluded that (b) (6), (b) (7)(C) did not disclosed the true reason as to why (b) (6), (b) (7)(C) contract had been terminated with the CCWF claiming (b) (6), (b) (7)(C) was let go due to CCWF having too many CNAs (See exhibit D-19 and D-20).

According to Tiffany, this situation is quite normal. She explained that whenever there are issues with attendance, the facility tends to place employees on “DNR”. She also added that they have had 8-9 employees to which this same situation happened to on the last 12-24 months (See exhibits B-3-d, D-15, D-16 and D-17). Tiffany also explained that All Health Services no longer has any work opportunities for (b) (6), (b) (7)(C) being that the only client they are able to provide Certified Nurse Assistants to is Management Solutions. Tiffany states that (b) (6), (b) (7)(C) is able to apply to work directly with the State facility but not through the registry (See exhibit D-3-d).

As conclusion, the investigation did not find enough evidence to substantiate (b) (6), (b) (7)(C) contract termination was due to or in connection with retaliation or discrimination.

DISPOSITION:

On 08/10/2017, a final conference was held at the Central California Women's Facility located in Chowchilla, CA. Present during the conference were Corryn Pierini (Chief Support Executive) and Nancy Heskett (Analyst). Wage and Hour Investigator (WHI) discussed the limited scope of the investigation, the Fair Labor Standards Act provisions- including coverage, nursing mothers, minimum wage, overtime, recordkeeping and child labor. WHI also explained joint employment and employer responsibilities, including the joint employment relationship between the California Department of Corrections and Rehabilitation (CDCR) dba Central California Women's Facility (CCWF) and All Health Services (Staffing agency).

Ms. Pierini was notified of the findings of the investigation as it related to (b) (6), (b) (7)(C) and the

provision that had been violated as explained in the status of compliance. Ms. Corryn Pierini indicated the following reason as to why the facility was not in compliance with the Fair Labor Standards Act and what he has done and will continue to do to avoid issues in the future:

Ms. Pierini stated that neither she nor Mr. Jimmy Webster (Chief Executive Officer) were ever made aware of the problem. She added that she believed the supervisors tried to accommodate complainant's needs based on the little or zero knowledge they have regarding the nursing mother's provision under the Fair Labor Standards Act and failed to communicate with her and Mr. Webster. Ms. Pierini stated the following will be done to assure future compliance:

- 1) Ms. Pierini will be setting up a Nursing Mothers' training for all supervisors which will be provided more likely via their internal on-line training system. Ms. Pierini expects this training to be created, approved and provided to the supervisors within the next two months.
- 2) Ms. Pierini and Ms. Heskett will meet with Human Resources to find and implement a strategy to improve communication between contract employees and facility's Human Resources regarding any needs for nursing accommodations.
- 3) Ms. Pierini will designate a set location that meets all requirements within a week after the final conference. Ms. Pierini stated that there are no employees currently needing to be accommodated but understands it's for the department's best interest to have a fixed location designated for lactation/expressing breast milk at all times. Ms. Pierini stated she will be designating room number A69 on building 805. WHI inspected the disclosed room and verified room met all requirements; "a place, other than a bathroom, that is shielded from view and free from intrusion and may be used by employee to express breast milk as needed". Ms. Pierini stated that room is locked at all times but that a key will be available 24 hours per day, 7 days per week at the medical office located about 20 feet from room. The room locks from inside, has power outlets, a chair, a desk and storage room to keep milk safe. Ms. Pierini stated a Memo would be created to disclose designated lactation room to the employees.

WHI reiterated that the employer (not the employee being accommodated) is the one responsible for making arrangement to make sure the nursing mother is in fact released from work duty for the needed breaks to express breast milk. Ms. Pierini understood and agreed to provide proper training and guidance

to all supervisors regarding matter.

WHI discussed issues with the designated “Lactation Room” located at the facility's Administration Building as explained in the status of compliance. Ms. Pierini stated that since this location is located out of the medical department she would need to speak with the Warren, Mr. Derrel Adams, to come up with a solution. Ms. Pierini stated she was going to be meeting with Ms. Adams (Warren), Mr. Webster (CEO) and Ms. Nelson (Labor Relations Specialist) to discuss issues disclosed in the final conference and would like the Department of Labor-Wage and Hour Division to come back and go over the provisions of the “reasonable break time for nursing mothers” once again to ensure there is no other questions. Ms. Pierini will contact WHI once they are ready for this meeting.

Ms. Pierini agreed to future compliance with all provisions under the Fair Labor Standards Act.

(b) (6), (b) (7)(C) Notification:

(b) (6), (b) (7)(C) was notified of the results of the investigation on 08/11/2017 via telephone.

Publications:

The following publications were provided to Mr. Robert Garcia on 08/09/2017 at the establishment: FLSA (WH 1318). Fact Sheets #13, 14, 17A, 21, 22, 23, 28, 28D, 43, 44, 73. Frequently Asked Questions – Break Time for Nursing Mothers (printed from www.dol.gov/whd).

HRG and Fact Sheets #28D, 44, 73, 77A were provided to Ms. Marcia Contreras (Staff Services Manager) during the initial conference on 3/30/2017.

Recommendation:

It is recommended that the case be closed administratively with no further action.

(b) (6), (b) (7)(C)

Wage & Hour Investigator

08/14/2017

WHISARD Compliance Action Report

U.S. Department of Labor Wage and Hour Division

Case ID: 1831854 Originating District: Sacramento District Office
Local Filing Number: 2017-302-07715 Investigating District: Sacramento District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 08/31/2017
Assignment Date: 08/31/2017

Employer Information

Trade Name: Foster Poultry Farms
Address: 900 W Belgravia Ave

Fresno, CA93706

Legal Name: Foster Poultry Farms
EIN: 94-1543499
County: Fresno
NAICS Code: 112340
No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 09/10/2015 BNPI: 11
To: 09/09/2017 Reinvestigation: ☒
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

(b) (7)(E) case. (b) (7)(E) Enterprise covg applied under 203(s)(1)(A):ER ADV over \$500K and at least two EEs engaged in interstate commerce. MODO is Sac DO. Exemptions: none claimed or tested. ER has prior history. Violations: Section 207(r)(1)(B) for not providing space to nursing mother. FC on 11/15/17. (b) (7)(E) contacted on 11/15/17 to inform case completed. Recommend close and no further action. Publs provided during FC - see narrative

WHI Signature: _____ Date: 11/20/2017

Reviewed By: _____ Date: _____

Foster Poultry Farms
900 W. Belgravia
Fresno, CA 93706
Business: 559-265-2000
EIN #94-1543499

Send future correspondence to:

Fred Sanderson
Associate General Counsel
1000 Davis St
Livingston, CA 95334
Cell: 209-394-6850

FAIR LABOR STANDARDS ACT - NURSING MOTHERS NARRATIVE

COVERAGE

Foster Poultry Farms in Fresno, CA is a poultry processing plant. There are about 12 processing plants all located throughout the United States with the majority located in the state of California. The company has several poultry processing plants, hatcheries, ranches, feed mills, and a plant that processes hand-held food items which they distribute to various retailers and sold globally. Foster Poultry Farms was founded in 1939 in Modesto, CA. It was incorporated in the state of California on December 28, 1962 and is headquartered in Livingston, CA (1000 Davis St.). The Chief Executive Officer is Laura Flanagan and several Vice Presidents. This is a family run business and owners wished not to disclose additional ownership information. There are currently (b) (4) employees working at the investigated location and (b) (4) employees companywide. The plant operates 24 hours a day with employees scheduled throughout three shifts (See initial conference interview, articles of incorporation, and emails; exhibits C-1, C-2, C-4, and D-37).

Enterprise coverage applied to all employees under section 203(s)(1)(A) of the Fair Labor Standards Act. According to a signed stipulation by the Associate General Counsel, Foster Poultry Farms confirmed that

its annual gross revenues have exceeded \$500,000. In addition, the company has been engaged in interstate commerce (See initial conference interview and coverage stipulation; exhibits C-1 and C-3).

Period of Investigation: 9/10/2015 through 9/9/2017 (Limited to Section 7(r) of the Fair Labor Standards Act – Nursing Mothers Provision).

Section 3(d) Employer: Since this corporation is large, there were various personnel in management that oversee the operations of the facility and who run the entire company, however, the plant manager (b) (6), (b) (7)(C) in Fresno, CA is the one that oversees the investigated processing plant (See initial conference interview; exhibit C-1).

Mapping: Foster Poultry Farms produces its own chickens as well as from vendors from different levels of its supply chain. This is a family run business and owners wished not to disclose further vendor information (See initial conference notes; exhibit C-1).

The Main Office District Office: This firm is part of a multiunit enterprise. Foster Poultry Farms' main office is located at 1000 Davis St. in Livingston, CA. The district office acting as main office district office is Sacramento. (b) (7)(E) (See exhibit D-1).

EXEMPTIONS

None claimed or tested. The nursing mothers in the last two years were non-exempt hourly employees and subject to Section 207 of the Act. The nursing mothers are entitled to protection under the nursing mother provisions of Section 207(r).

STATUS OF COMPLIANCE

Reason for Investigation: This investigation (b) (7)(E) (b) (6), (b) (7)(C) (b) (7)(E) was for failure to provide adequate space to express milk. Numerous calls and letters were mailed to (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) was contacted to help in facilitating a call with (b) (6), (b) (7)(C) during (b) (6), (b) (7)(C) appointment with the counselor. An interview was conducted over the phone during (b) (6), (b) (7)(C) appointment, however, (b) (6), (b) (7)(E) (See case diary entries, letters, and notes; exhibits D-22, D-32, and D-34). The case was handled without limiting it to (b) (6), (b) (7)(C). There were other nursing mothers working for the employer during the period of investigation. Based on

interview statements, records, and inspection of the designated nursing mother areas, (b) (6), (b) (7)(C) (b) (7)(E) . The investigation was limited to Section 7(r) of the Fair Labor Standards Act – Nursing Mothers Provision.

History: There were several prior cases for this employer and all cases were linked (See exhibits D-2 through D-12).

<u>Case ID</u>	<u>Assign Date</u>	<u>Location</u>	<u>Act</u>	<u>Viols</u>	<u>Wages</u>
353517	7/18/97	Foster Farms (Hollister)	MSPA	Items 1,2,6	\$0
355690	9/29/97	Foster Farms (Creswell)	FLSA	No viols	\$0
409810	10/6/97	Foster Farms (Creswell)	MSPA	Items 2,16	\$0
407113	10/9/97	Foster Farms (Livingston)	FLSA	No viols	\$0
407333	6/19/98	Foster Farms Dairy (Modesto)	FLSA	No viols	\$0
1085551	8/16/00	Foster Farms (Sumner)	MSPA	Items 1,2,6	\$125 cmps
1335297	2/17/04	Foster Farms (Demopolis)	FLSA	OT, R/K	\$22,262.13
1420715	9/24/05	Foster Poultry Farms (Livingston)	FMLA	Policy Review	\$0
1473964	3/19/07	Foster Farms (Livingston)	FLSA	15(a)(3)	\$0
1510767	4/7/08	Foster Poultry Farms (Livingston)	FLSA	No viols	\$0
1727602	6/23/14	Foster Poultry Farms (Livingston)	FLSA	No viols	\$0

According to the employer, there is a verbal nursing mothers' policy but nothing in writing. The Human Resources Director, Rebecca Vallier, informed that the nursing mother needs to inform (b) (6), (b) (7)(C) supervisor, health services nurse, or human resources of the need to express milk. Once they do that, the employer can provide (b) (6), (b) (7)(C) with an area to express milk. Employees are allowed to express milk whenever they need to and for as long as they need. Employees are allowed two rest breaks and a meal break. If a mother needs to express milk outside of those times, they are allowed to take additional breaks. Information about nursing mothers is only provided upon request from the employee. Employees are allowed to express milk for at least a year but if more time is needed then the employer allows the time (See initial conference interview; exhibit C-1).

The employer was asked to provide a list of all the employees that took Family Medical Leave for the birth of a baby. Each employee was contacted by phone and in writing (See employee list, notes of contacts, and copies of letters mailed; exhibits D-21 through D-32).

Section 207(r)(1)(A) – A Reasonable Break Time: No violations. (b) (7)(E)

(b) (7)(E). According to employee interviews they were not aware of their nursing mother rights at the workplace. Only one employee, (b) (6), (b) (7)(C), communicated to (b) (6), (b) (7)(C) employer of the need to express milk at the plant. There were other employees that either expressed milk in their car or in the bathroom because they didn't know that there were designated areas (See employee interviews; exhibits B-2, B-3, B-5, and B-7 through B-10).

Section 207 (r)(1)(B): - A Place Shielded from View and Free from Intrusion: Foster Poultry Farms was found in violation of not providing a place shielded from view and free from intrusion. There was conflicting information regarding (b) (7)(E) (b) (6), (b) (7)(C) about not being provided with a place shielded from view and free from intrusion. The human resources assistant stated that she had one employee (b) (6), (b) (7)(C) ask if there was a room (b) (6), (b) (7)(C) could use to express milk and that she directed (b) (6), (b) (7)(C) to speak to a nurse in Health Services. (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) asked the emergency medical technician if (b) (6), (b) (7)(C) could express milk and was told there was no place to do that. (b) (6), (b) (7)(C) offered the exam room but was told that if there was an injured employee in there then (b) (6), (b) (7)(C) would not be able to use it. The technician did not offer the training room as a second option. (b) (6), (b) (7)(C) was told to go talk to human resources. The statement by the Emergency Medical Technician, (b) (6), (b) (7)(C), tells a different story. (b) (6), (b) (7)(C) stated that an employee (b) (6), (b) (7)(C) had come into the Health Services Room asking for an area to express milk. At the time, there was an injured employee in the exam room, and the technician stated that she told (b) (6), (b) (7)(C) to give (b) (6), (b) (7)(C) a few minutes and (b) (6), (b) (7)(C) would assist (b) (6), (b) (7)(C) and provide (b) (6), (b) (7)(C) with a drape. A follow-up interview was done with (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) was not treating an injured employee in the exam room and that the training room was never offered; both interviews provided conflicting information. Because (b) (6), (b) (7)(C) had spoken to human resources about the need to express milk and was redirected to speak to a nurse in health services who did not provide a space at the time of need, led to the violation. There were two opportunities for the employer to provide (b) (6), (b) (7)(C) with a place to express milk. At the time of the initial conference, the employer did not believe there were any nursing mothers at their plant. Furthermore, interviews support that (b) (6), (b) (7)(C) communicated with the employer of (b) (6), (b) (7)(C) need to express milk during the first week of August. It was not until September 22, 2017 that the training room's window was covered with blinds, therefore shielded from view. (b) (6), (b) (7)(C) also stated during (b) (7)(E) that (b) (6), (b) (7)(C) employer required a doctor note to express milk; however, (b) (7)(E) (b) (6), (b) (7)(C) (See employee interviews; exhibits B-1, B-2, and B-6).

The employer has designated two areas for nursing mothers. The first is the Exam Room located inside the Health Services Room. The second area is the Training Room. Either one of those rooms can be utilized by a nursing mother. There are also four breakrooms for employees to store their lunches and/or breast milk (See email; exhibit D-34).

Exam Room: The exam room is located inside the Health Services Room. This room has a door with a lock. Once this room is locked, the nursing mother may use the exam room which also has a curtain to shield from view. There are electrical outlets, counter space, a small table, and chairs in the room. In addition, there is a sign that can be placed on the door notifying others not to enter the room(See pictures; exhibits D-15 through D-17).

Training Room: This room has a door with a window. The door can be locked from the inside. According to the employer, the window is covered with paper when a nursing mother needs to use it. There is a table, chairs, and electrical outlets in the room. During the second visit to the plant, the room had been modified to include blinds to cover the window. Rebecca Valier, Human Resources Director, informed that the blinds were installed in case there were to be a nursing mother at their facility, they wouldn't have to cover the window with paper each time the room was needed to express milk. In addition, there is a sign that can be placed on the door notifying others not to enter (See pictures; exhibits D-13 and D-14).

Section 211 – Record Keeping: No violations. The Fair Labor Standards Act poster was found at the establishment. Along with the poster, the employer maintains Fact Sheet 73 (Break Time for Nursing Mothers under the Fair Labor Standards Act) in both English and Spanish posted on their information board that is accessible to employees (See pictures; exhibits D-18 through D-20).

Section 212 – Child Labor: There were no minors under the age of 18 working for this employer (See initial conference interview; exhibit C-1).

DISPOSITION

An initial conference was held on September 12, 2017 (See appointment letter and email communication; exhibits D-33, D-38, and D-39). A final conference was held on November 15, 2017 with Rebecca Vallier (Human Resources Director) and Fred Sanderson (Associate General Counsel) at 900 W.

Belgravia Fresno, CA. During the initial and final conference the following was discussed and explained: coverage, limited scope of the investigation, minimum wage, overtime, record keeping, and child labor. The employer was notified of the following Fair Labor Standards Act provision that had been violated:

- A Place Shielded from View and Free from Intrusion: Failure to provide a place to express milk when requested by a nursing mother.

Ms. Vallier indicated the following reason why the company was not in compliance with the Nursing Mothers' provision of the Fair Labor Standards Act and what the company would do to avoid issues in the future. She agreed to future compliance with the Fair Labor Standards Act (See final conference notes; exhibit D-40):

- Ms. Vallier informed that she was aware of a situation with an employee who had asked for a space to express milk. She added that the front office clerk did not know much about nursing mothers because (b) (6), (b) (7)(C) was new, however, discussed the issue with a supervisor in human resources. The human resources supervisor then followed up the human resources director to find out what areas were designated so she can follow up with the employee. Ms. Vallier said that the nursing mother was contacted that same day or the following day. She did not have the exact date or knew of details. She also added that the nursing mother was not turned away. She also mentioned that she had spoken to the Emergency Medical Technician, (b) (6), (b) (7)(C), who told her that an employee had come to (b) (6), (b) (7)(C) office to ask for a place to express milk and that at the time (b) (6), (b) (7)(C) was busy with an injured employee in the exam room and simply asked the employee to wait but the employee left. Before, the final conference, the employer had already addressed the issue with various personnel involved. Fred Sanderson, Associate General Counsel, along with Ms. Vallier, will use the Enhanced Compliance Agreement (provided by wage hour investigator) terms as a guide to prevent violations in the future with the Nursing Mothers' provision of the Fair Labor Standards Act. Ms. Vallier agreed to future compliance with all Fair Labor Standards Act provision.

The employer was presented with an Enhanced Compliance Agreement (copy found in the case file under the BW/CMP/DCA tab) and each of the terms was reviewed. Mr. Sanderson was hesitant to signing the agreement without further reviewing it with the owners of the company. He added that it would be

difficult to apply the terms across all locations with (b) (4) employees. Wage Hour Investigator asked Mr. Sanderson to review the terms with the owners and really consider entering in the agreement with the Department of Labor. Investigator added that the terms may be modified such as limiting it to one location or even limiting the agreement to a period of time instead of indefinite. Associate General Counsel, Fred Sanderson, agreed to consider the agreement. Wage Hour Investigator further added that Enhanced Compliance Agreements are being signed by various employers with much success. Mr. Sanderson will be contacted in 1-2 weeks to follow-up on the employer's decision to signing the agreement (See final conference notes and copy of the enhanced compliance agreement; exhibit D-40).

(b) (6), (b) (7)(C) *Notification:* (b) (6), (b) (7)(C) was contacted every 30 days with the status of the case. On November 15, 2017 (b) (6), (b) (7)(C) was contacted to inform (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) case had been completed, however, there was no answer. A voicemail was left at the number (b) (6), (b) (7)(C) provided (b) (6), (b) (7)(C) informing (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) case had been completed and (b) (6), (b) (7)(C) may contact Wage Hour Investigator, (b) (6), (b) (7)(C) if (b) (6), (b) (7)(C) had further questions (See case diary entries and contact letters; exhibits D-34 and D-35).

Recommendation: It is recommended that this case be administratively closed.

Publications Provided: WH-1282, WH-1088, WH-1318, , FS#44, FS#77A, FS#73, and Federal Register- Vol 75 No. 244

(b) (6), (b) (7)(C)

Wage & Hour Investigator
November 15, 2017

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1840451 Originating District: San Francisco District Office
Local Filing Number: 2018-316-09917 Investigating District: San Francisco District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 12/05/2017
Assignment Date: 12/05/2017

Employer Information

Trade Name: Crestwood Recovery & Rehabilitation Center Legal Name: Crestwood Recovery & Rehabilitation
Address: 115 Oddstad Dr. EIN: 68-0399495
County: Solano
NAICS Code: 623110
Vallejo, CA94589 No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 12/19/2015 BNPI:
To: 12/18/2017 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

10.5 HRS- FLSANM-cov. under section 3(s)(1)(B); (b)(7)(E) is non-exempt service coordinator. (b)(7)(E) alleged (b)(6), (b)(7)(E) was not provided a private space for expressing breast milk free from intrusion. Sec. 7 (r) vio (b)(7)(E) via IC and EE interview. Designated room not free from intrusion. (Interuppted 2x by other ee's). New room assigned with single key. FC held on 12/28/17 w/ HR Capp. ; firm ATC by increasing communication w/ EE's and providing room free from intrusion. Rec admin close. Pubs-hrg and FLSANM fact sheet

WHI Signature: _____ Date: 12/28/2017

Reviewed By: _____ Date: _____

Corporate Headquarters:
520 Capitol Mall, Suite 800
Sacramento, CA 95814
(916) 471- 2244

Site Investigated:
Crestwood Recovery &
Rehabilitation Center
115 Oddstad Drive
Vallejo, Ca. 94589
(707)-552-0215

FED EIN: 68-0399495

FLSNM NARRATIVE REPORT

Coverage

The subject firm is a rehabilitation center for the mentally ill. The firm provides on-site 24-hour care via the services of hired RN's and LVN's at a 100+ bed facility in Vallejo, Ca. The firm has 19 care facilities throughout the State of California and is headquartered in Sacramento, California.

The firm is an institution "primarily engaged in the care of the sick, the aged, or the mentally ill" Therefore, the firm is covered under Section 3(s)(1)(B) of the FLSA. The firm employs over 50 employees. (See Exhibit B1, C1, D2, D2A)

MOD0

Crestwood Recovery & Rehabilitation Center executive office is located in Sacramento; CA. (b) (7)

Exemptions

No exemptions claimed.

Status of Compliance

Prior History: A search of the whisard database disclosed this was the firm's first INV with WHD..

Investigative Period: December 19, 2015 through December 18, 2017.

Case Assignment: This case was initiated (b) (7)(E) (b) (6), (b) (7)(C) is employed as non-exempt service coordinator. T (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) had left on maternity leave and had returned to work and that (b) (6), (b) (7)(C) was still in the first 12 months of the baby's birth. T (b) (6), (b) (7)(C) states (b) (6), (b) (7)(C) was offered a room to express milk that did not properly lock. (b) (6), (b) (7)(C) stated that co-workers had previously opened the door in the designated room (b) (6), (b) (7)(C) was in while expressing milk. (b) (6), (b) (7)(C) stated (b) (6), (b) (7)(C) had spoken to (b) (6), (b) (7)(C) supervisor about the issue and was eventually given an appropriate space to express milk free from intrusion of others. (See Exhibit B-1). The current investigation was handled as a limited investigation which examined the scope of compliance applicable to nursing mother u (b) (7)(E)

Break Time for Nursing Mothers:

Section 7(r)(1)(A)- provides that nursing mothers are entitled to provide “a reasonable break time” for an employee to express milk “each time such employee has need to express milk”.

Per Interviews, break time to express was not an issue. Employee was paid for all break times. Conversation with Administrator, (b) (6), (b) (7)(C), confirmed employees were allowed to use break times to express milk. (See Exhibit B1, C1)

Section 7(r)(1)(B)- requires employers to provide a “place other than a bathroom, that is shielded from view and free from intrusions from coworkers and the public, which may be used by an employee to express breast milk”.

Per initial conference with Administrator, (b) (6), (b) (7)(C) it was confirmed that (b) (6), (b) (7)(C) had indeed been interrupted twice due to the initial assigned room for expressing milk not being free from intrusion of others. While the door did lock by key, other employees were also given access to the room via key as well and therefore the intrusion occurred.

Section6- Minimum Wage

No violations were established. (This investigation was limited in scope to the FLSANM with a limited review

of a profile pay period) See exhibit A0

Section 7- Overtime

No violations were established. (This investigation was limited in scope to the FLSANM with a limited review of a profile pay period) See exhibit A0

Section 11:(RK)

No violations were established. (This investigation was limited in scope to the FLSANM with a limited review of a profile pay period) See exhibit A0

Section 12: Child Labor

No violations of child labor were substantiated. (This investigation was limited in scope to the FLSANM with a limited review of a profile pay period) See exhibit C1

(b) (6), (b) (7)(C) Notification:

(b) (6), (b) (7)(C) was notified on December 28, 2017 of the findings of the investigation. (b) (6), (b) (7)(C) stated (b) (6), (b) (7)(C) was satisfied with the results of the investigation and confirmed (b) (6), (b) (7)(C) did indeed no have a room free from intrusion at (b) (6), (b) (7)(C) workplace to express milk.

Disposition:

A telephonic final conference was held on December 28th, 2017. Present at the final conference were WHI (b) (6), (b) (7)(C) and Dawn Capp (Director of Human Resources). WHI discussed the FLSANM regulation in detail with Capp. WHI (b) (6), (b) (7)(C) explained the investigation did result in a violation of the FLSANM due to the fact the firm failed to initially provide (b) (6), (b) (7)(C) with a room free from intrusion to express milk. Ms. Capp noted that the firm had already discussed the matter with (b) (6), (b) (7)(C) and have come to an agreement on which room will be utilized and assured (b) (6), (b) (7)(C) and WHI (b) (6), (b) (7)(C) that the room was free from intrusion due to the fact that the key to the room would be closely monitored. Ms. Capp stated she had a clear understanding of the law and agreed to comply. It was also noted to Ms. Capp that the investigation was

limited in scope to the issue of one employee and the FLSANM issue.

Publications provided: Fact Sheet #44 and #73. DOL nursing mothers FAQ's website information.

Recommendation

It is recommended that this case be administratively closed (b) (7)(E)

(b) (6), (b) (7)(C)

Investigator

December 28th, 2017

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1840769 Originating District: Sacramento District Office
Local Filing Number: 2018-302-07901 Investigating District: Sacramento District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 12/07/2017
Assignment Date: 12/11/2017

Employer Information

Trade Name: Walmart Store #2001
Address: 5125 E. Kings Canyon Rd.

Fresno, CA93727

Legal Name: Wal-Mart Stores, Inc.
EIN: 71-0794409
County: Fresno
NAICS Code: 452990
No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 12/09/2015 BNPI: 11694
To: 12/08/2017 Reinvestigation: ☒
Investigation Type: (b) (7)(E) Recurring Violation: ☒
Investigation Tool: Full Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

(b) (7)(E) case. Enterprise coverage applied under 203(s)(1)(A): ADV over \$500K and at least 2 EEs handled interstate commerce goods. MODO is SW Region Program Operations Office. MUER. Exemptions: None claimed or tested. ER has extensive prior history. Violations: Section 207(r)(1)(B) for not providing space shielded from view & free from intrusion. FC on 1/11/18. (b) (7)(E) contacted on 1/11/18 to inform case completed. Rec close & no further action. Pubs provided during FC - see narrative

WHI Signature: _____ Date: 01/19/2018

Reviewed By: _____ Date: _____

Wal-Mart Stores, Inc.
Dba Walmart Store #2001
5125 E. Kings Canyon Rd.
Fresno, CA 93727
Business: 559-252-9457
EIN #71-0794409

Send future correspondence to:

Arturo Flores
Store Manager
5125 E. Kings Canyon Rd.
Fresno, CA 93727
Cell: 559-360-9253

FAIR LABOR STANDARDS ACT - NURSING MOTHERS NARRATIVE

COVERAGE

Wal-Mart Stores, Inc. dba Walmart Store #2001 is a huge retailer of various goods, merchandise, and grocery items. This retailer has been in existence since 1962 and was incorporated in Arkansas on October 31, 1969. The corporate office is located at 702 S.W. 8th Street Bentonville, AK. There are 11,695 stores and clubs in 28 countries. It is a family-owned business, as the company is controlled by the Walton family. Sam Walton's heirs own over 50 percent of Walmart through their holding company, Walton Enterprises, and through their individual holdings. Greg Penner is the Chairman, Doug McMillon is the President & Chief Executive Officer, and Brett Biggs is the Chief Financial Officer. The investigated store is open seven days a week from 6AM to 10:00PM and closed on Christmas Day. There are approximately 400 employees working at the investigated location and 2.3 million companywide (See initial conference interview, articles of incorporation, federal ID number, and company website information; exhibits C-1 and C-3 through C-6).

Enterprise coverage applied to all employees under section 203(s)(1)(A) of the Fair Labor Standards Act.

According to the employer, gross sales were well over \$500,000 for the last three years. At least two employees handled goods that have entered the stream of commerce (b) (4)

(See initial conference interview, interstate commerce goods, and company website; exhibits C-1, C-2, and C-6).

Period of Investigation: 12/9/2015 through 12/8/2017 (Limited to Section 7(r) of the Fair Labor Standards Act – Nursing Mothers Provision).

Section 3(d) Employer: Since this corporation is very large, there were various personnel in management that oversee the operations of this retail store and who run the entire company, however, the acting store manager (b) (6), (b) (7)(C) is the one that oversees the investigated location (See initial conference interview; exhibit C-1).

Mapping: Walmart hires employees directly through the company website. Merchandise is sold directly to customers via their retail store or website. No additional information was known by the acting store manager (See initial conference interview; exhibit C-1).

The Main Office District Office. This firm is part of a multiunit enterprise. Walmart Inc.'s main office is located at 702 S.W. 8th Street Bentonville, AK. The district office acting as the main office district office is the Southwest Region Program Operations Office. (b) (7)(E)

(See exhibits D-1 and D-2).

EXEMPTIONS

None claimed or tested. The nursing mother in the last two years was a non-exempt hourly employee and subject to Section 207 of the Act. The nursing mothers are entitled to protection under the nursing mother provisions of Section 207(r).

STATUS OF COMPLIANCE

Reason for Investigation: This investigation was initiated by (b) (7)(E) and limited to (b) (6), (b) (7)(C) and to Section 7(r) of the Fair Labor Standards Act – Break Time for Nursing Mothers Provision. (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) is a nursing mother who needed to express milk for (b) (6), (b) (7)(C) child; it is less than 1 year after the child's birth. (b) (6), (b) (7)(C) (b) (7)(E) (b) (6), (b) (7)(C) current employer, Walmart Store #2001 located in Fresno, CA failed to provide an adequate space to express milk. (b) (6), (b) (7)(C) also (b) (7)(E) (b) (6), (b) (7)(C) was discriminated against because (b) (6), (b) (7)(C) was given a disciplinary action; however, the disciplinary action was for dress code which was removed prior to initiating the investigation (See employee and initial conference interviews; exhibits B-1 and C-1). (b) (7)(E) (b) (6), (b) (7)(C) was provided (See exhibit B-1). The case was handled without limiting it to (b) (6), (b) (7)(C) and disclosing the name. During the initial conference, the store manager was asked to provide a list of all nursing mothers in the last two years and he only provided one, which happened to be (b) (6), (b) (7)(C). Based on interview statements, records, and inspection of the designated nursing mother areas, (b) (6), (b) (7)(C) (b) (7)(E) (b) (6), (b) (7)(C). There were no back wages or civil money penalties computed.

Prior History: This employer has extensive history for Family Medical Leave Act and Fair Labor Standards Act violations throughout the nation. There were five prior cases specific to the Nursing Mothers Provision (Case ID#s 1775819, 1765287, 1646042, 1814617, and 1766287). All cases had violations.

Walmart provided a copy of their written nursing mothers' policy. The policy fully supported breastfeeding employees. Employees are allowed to express milk during any regular meal and rest periods. If meal and rest periods are not sufficient, the employee may take additional breaks as needed. A nursing mother may store her breast pump machine in the breakroom. Bathrooms are located in the front and back of the store (See policy; exhibit D-3).

Section 207 (r)(1)(B): - A Place Shielded from View and Free from Intrusion: Walmart was found in violation of not providing a place shielded from view and free from intrusion. The employer designated three different places to express milk. They were the Front Manager's Office, Back Manager's Office/Layaway Room, and the Customer Fitting Room (See pictures; exhibits D-4 through D-11). Two of the rooms were found in violation and referenced below.

Back Manager's Office/Layaway Room: This room was located at the back end of the store and was the second place that (b) (6), (b) (7)(C) was designated to use. It had a door with a lock, electrical outlet, counter space, and a chair. During the time that the room was used, the small window on the door was covered. There were three different instances in which three different males consisting of two managers

and one hourly employee (b) (6), (b) (7)(C) used a key to enter the room while (b) (6), (b) (7)(C) was expressing milk. Even though there was a sign placed on the front of the door, three different associates walked in anyway. (b) (6), (b) (7)(C) (Assistant manager) confirmed that (b) (6), (b) (7)(C) knew about the situation. During (b) (6), (b) (7)(C) interview (b) (6), (b) (7)(C) disclosed that the nursing mother (b) (6), (b) (7)(C) informed (b) (6), (b) (7)(C) of the unfortunate situation and is the reason why (b) (6), (b) (7)(C) was moved to a different room to express milk. (b) (6), (b) (7)(C) also added that (b) (6), (b) (7)(C) had seen (b) (6), (b) (7)(C) place a sign on the front of the door when (b) (6), (b) (7)(C) used the room to express milk. The Back Manager's Office/Layaway Room was not shielded from view and free from intrusion (See pictures; exhibits D-5 through D-8).

Customer Fitting Room: The room was located in the middle of the store. It had a door with a lock, extension cord, small space to place electrical pump, and a chair. This is an area that is accessible to customers both male and female to try on clothing. One of the four rooms in the Customer Fitting Area was designated as the nursing mothers' room. The fitting room, however, has open spaces on the bottom and on the top of each room which was not considered private and shielded from view (See pictures; exhibits D-8 through D-11).

Section 211 – Record Keeping: No violations. The Fair Labor Standards Act poster was found at the establishment (See picture; exhibit D-12).

Section 212 – Child Labor: There were no minors under the age of 18 working for this employer (See initial conference interview; exhibit C-1).

DISPOSITION

An initial conference was held on December 13, 2017 (See appointment letter; exhibit D-13). A final conference was held on January 11, 2018 with Jennifer Gamboa (Regional Manager), Derek Scott (Senior Associate General Counsel), and Arturo Flores (Acting Store Manager) at 5125 E. Kings Canyon Rd. Fresno, CA. During the initial and final conference the following was discussed and explained: coverage, limited scope of the investigation, minimum wage, overtime, record keeping, and child labor. The employer was notified of the following Fair Labor Standards Act provision that had been violated:

- A Place Shielded from View and Free from Intrusion: Failure to provide a room shielded from view and free from intrusion by coworkers and the public.

Mr. Scott, Ms. Gamboa, and Mr. Flores were not able to provide a reason for the violation. The senior associate general counsel informed that Walmart will conduct an internal investigation as to why three different male employees walked into the room designated to the nursing mother while (b) (6), (b) (7)(C) was expressing milk. The acting store manager added that immediately following the initial conference on December 13, 2017, he met with management to review Walmart's nursing mothers' policy and again a few days after with those managers that were not present on December 13, 2017. Following the final conference, a new room will be designated that will meet the requirements. Mr. Scott will have a discussion with management following the final conference. On January 12, 2018, Mr. Scott will inform wage hour investigator of the room that will replace the fitting room currently designated to the nursing mother. Mr. Scott will also be sending a summary of the reason for the violation after the internal investigation has been completed and what action the company will take by the end of the week (January 19, 2018) (See final conference notes; exhibit D-14):

Mr. Scott agreed to future compliance with the Fair Labor Standards Act.

In addition, the employer was informed that the investigation also found that a nursing mother has been called back to work from (b) (6), (b) (7)(C) rest break after 15 minutes to assist customers at the register. The nursing mother used (b) (6), (b) (7)(C) rest breaks to express milk. Wage hour investigator informed the employer to have a discussion with the customer service manager so (b) (6), (b) (7)(C) understands that (b) (6), (b) (7)(C) cannot control the amount of time the nursing mother is expressing milk. Even though the nursing mother did not end (b) (6), (b) (7)(C) expressing session, it could potentially lead to a violation in the future.

(b) (6), (b) (7)(C) *Notification:* (b) (6), (b) (7)(C) was contacted every 30 days with the status of the case. On January 11, 2018 (b) (6), (b) (7)(C) was contacted to inform (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) case had been completed. (b) (6), (b) (7)(C) asked about the possibility of filing a sexual harassment complaint and wage hour investigator provided her with the contact phone number (See case diary entries).

Recommendation: It is recommended that this case be administratively closed.

Publications Provided: WH-1282, WH-1088, WH-1318, FS#44, FS#77A, FS#73, and Federal Register-Vol 75 No. 244

ADDENDUM: On January 12, 2018, the Sr. Associate General Counsel informed via email a description of the room that will be designated to nursing mothers. The designated room will be the Back

Manager's Office/Layaway Room. The small window on the door will continue to be shielded from view by covering it. A bolt lock was installed on the interior side of the door that is controlled by the nursing mother using the room. This will prevent any employee from entering the room even if they have a key. Additional signs were made and will be placed on the exterior door handle as well as the exterior wall of the room. The signs will inform others that the room is in use and the nursing mother should not be disturbed. The co-manager (Arturo Flores) will be communicating the changes and the requirements for nursing mothers to the store's management team (See email summary; exhibit D-15)

On January 19, 2018, the Sr. Associate General Counsel informed via email a follow up to the email on January 12, 2018. Mr. Scott assessed what happened in the store regarding walking in while the nursing mother was expressing milk. He said that the type of lock used in the room that was designated to nursing mothers still allowed managers with a key to access the room from the outside. He also found that managers occasionally needed access to the room to retrieve high value merchandise stored for customers; however, the room is no longer being used for that purpose. His investigation revealed that each employee that accessed the room while the nursing mother was expressing milk gained that access using a key to obtain stored merchandise and did not observe the sign. An additional sign was added and placed on the door handle when the room is being used. Also, the room is no longer being used to store merchandise (See exhibit D-16).

(b) (6), (b) (7)(C)

Wage & Hour Investigator
January 19, 2018

WHISARD Compliance Action Report

U.S. Department of Labor Wage and Hour Division

Case ID: 1842882 Originating District: Los Angeles District Office
Local Filing Number: 2018-231-09474 Investigating District: Los Angeles District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 01/08/2018
Assignment Date: 01/10/2018

Employer Information

Trade Name: Esperanza Elementary Legal Name: Los Angeles Unified School District
Address: 680 Little St. EIN: EIN Missing
County: Los Angeles
NAICS Code: 09710
No. Of Employees: 500
Los Angeles, CA90017

Investigation Information

Period Investigated From: 10/30/2017 BNPI:
To: 03/06/2018 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

(b) (7)(E) case - (b) (7)(E) was not given a proper place to express milk when (b) (7)(E) returned to from maternity leave. During the investigation it was found that the firm did have a lactation policy but it was not implemented properly to the employee, thus a violation occurred under section 7(r)(1)(B). The employer agreed to meet w/ (b) (7)(E) to resolve the issue. WHI received a call from both the ER & EE that issues have been resolved. Pubs provided, Conclude case once reviewed.

WHI Signature: _____ Date: 04/04/2018

Reviewed By: _____ Date: _____

Los Angeles Unified School District

333 S. Beaudry Ave.
Los Angeles, CA 90017
Phone #: (213) 421-1000
Fax #: (213) 241-3308

Case #: 1842882
Local #: 2018-231-09474

FLSANM Narrative

Case Assignment Information:

This investigation was initiated by (b) (7)(E) (b) (6), (b) (7)(E) (b) (7)(E) was not given a proper place to express his free and clear from intrusion.

Coverage:

Los Angeles Unified School District is the largest school district in Southern California with 900 schools and 187 charter schools. The District employs over thousands workers including teachers, assistants, administrators and janitorial staff. LAUSD is a covered employer under section 3(s)(1)(C) of the FLSA as a public agency, thus coverage is met for all employees (See *Exhibits C-1*).

Period of Investigation: This investigation was limited to (b) (6), (b) (7)(C) it covers the period of October 30, 2017 to March 6, 2018.

MODO: (b) (7)(E) as the district has many locations within the LADO jurisdiction (See *Exhibit D-1*).

Exemptions:

Part 541.1 & 541.3 are allowed for all Administrators, Principals and Teachers as they all have advance knowledge in a field of science or learning in a prolonged course of specialized

instruction, supervise 2 or more employees and earn at least \$455.00 a week.

Status of Compliance:

Prior History: The Los Angeles Unified School District has been investigated by the Wage and Hour Division – Los Angeles District Office. There have been many investigations at different schools/locations; this is the first investigation for Esperanza School located at 680 Little St. Los Angeles, CA 90017.

Status: (b) (7)(E) (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) was not provided with a proper space to express milk. (b) (6), (b) (7)(C) (b) (7)(E) as (b) (6), (b) (7)(C) was expressing milk in a classroom not free from intrusion. As a result the firm designated a specific location for (b) (6), (b) (7)(C) to express milk with free and clear from intrusion.

Section 7(r)(1)(A) – Reasonable Break Time:

No violations were found, as the employer compensates all employees during the times that employees express milk (See *Exhibit D-6*).

Section 7(r)(1)(B) – A Place, Other than a Bathroom, Shielded from View and Free from Intrusion:

The firm violated section 7(r) (1) (B) as they did not provide a proper place for (b) (6), (b) (7)(C) to express milk. (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) was given proper instructions from the staff at the school. (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) was told that (b) (6), (b) (7)(C) could not place a sign on the door while expressing milk in a classroom (See *Exhibits B-1*).

Section 15(a)(3) – Prohibiting Retaliation Under the FLSA:

No violations were found, as the employer did not retaliate against the employee. The employer did not retaliate against the employee and understood the reasons (b) (7)(E) (b) (7)(E). The principal – Brad Rumble stated that he was not aware of the situation until he received the call from the Department of Labor.

Disposition:

On March 3, 2018, a meeting was held with Jacqueline Wagner – General Counsel, Brad Rumble - Principle of the School and Maribel Carrillo – Assistant Principle Elementary Specialist and WHI (b) (6), (b) (7)(C). The meeting was held to discuss (b) (6), (b) (7)(C) (b) (7)(E) of not having a proper place to express milk. Mr. Rumble stated that was not aware of the situation with (b) (6), (b) (7)(C) until he received a call from the Department of Labor. Ms. Carrillo stated that she has spoken to (b) (6), (b) (7)(C) after the incident occurred and told (b) (6), (b) (7)(C) that the school has to designate rooms for expressing milk and the keys for the rooms were located in the front office. She also stated that she never told (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) was not allowed to put a sign outside the door as (b) (6), (b) (7)(C) (b) (7)(E). Ms. Wagner stated that LAUSD has lactation policy in place for all employees to read and that policy covers all aspect of the nursing mother's rights. Mrs. Wagner stated that this situation was a misunderstanding between all parties. Mrs. Wagner provided WHI (b) (6), (b) (7)(C) a copy of the nursing mother's policy (See Exhibit D-6). Mrs. Wagner and Mr. Rumble stated that they will meet (b) (6), (b) (7)(C) to discuss the proper procedures and policies.

On March 19, 2018, WHI (b) (6), (b) (7)(C) received a call from (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) attended a meeting with Mrs. Wagner, Mr. Rumble and Ms. Carrillo and that they explained all the nursing mother policy. They also designated 2 rooms for nursing mother with the keys located in the office. (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) is satisfied with the meeting and everything has been taken care of. On March 20, 2018, WHI (b) (6), (b) (7)(C) received an email from Mrs. Wagner verifying what (b) (6), (b) (7)(C) stated.

On March 20, 2018, WHI (b) (6), (b) (7)(C) spoke with Mrs. Wagner – General Counsel, Mrs. Wagner stated it was a misunderstanding everything has been taken care of. Mrs. Wagner stated that all parties discussed the situation and reached an agreement (See Exhibits D-2).

(b) (6), (b) (7)(C) Notification: On March 20, 2018, (b) (6), (b) (7)(C) verified that (b) (6), (b) (7)(C) (b) (7)(E) were taken care. WHI (b) (6), (b) (7)(C) told (b) (6), (b) (7)(C) if (b) (6), (b) (7)(C) has any more questions than (b) (6), (b) (7)(C) can call the Department of Labor.

Publications:

HRG, FLSA, OT Bulletin, Fact Sheet #44, #77 #43

Recommendations:

(b) (7)(E) , I recommend that this case be administratively closed.

(b) (6), (b) (7)(C)

Wage & Hour Investigator

April 4, 2018

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1847554 Originating District: Sacramento District Office
Local Filing Number: 2018-302-08033 Investigating District: Sacramento District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 03/05/2018
Assignment Date: 05/01/2018

Employer Information

Trade Name: JCPenny Legal Name: J. C. Penney Corporation, Inc.
Address: 2115 S Mooney Blvd EIN: 13-5583779
County: Tulare
NAICS Code: 45211
Visalia, CA93277 No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 07/21/2016 BNPI: 0
To: 07/20/2018 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Full Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

(b) (7)(E) - FLSANM. COV: FLSA 203(s)(1)(A) & EEs hndlng IC goods. EX: N/A. SOC: Violation-Sec 207(r)(1)(A) - (b) (6), (b) (7)(C) wasn't provided with reasonable breaks to express milk from 10/02/17-10/29/17. (b) (6), (b) (7)(C) was required to find own coverage for breaks & sometimes breaks weren't taken due to lack of coverage. ER came into compliance during POI. Managers were trained. DISP: FC 08/30/18 by tel w/ Atty., Greg Bair. ATC & ATFC. Rec Admin Close. Pubs: FS #73, 77a, Reg part 516, 778, 785, & 570.

WHI Signature: _____ Date: 09/07/2018

Reviewed By: _____ Date: _____

Case ID: 1847554

Case File: 2018-302-080 33

J. C. Penney Corporation, Inc.
Dba: JCPenny (Visalia, CA)
2115 S Mooney Blvd
Visalia, CA 93277
Phone: (559) 732-4171
EIN: 13-5583779

Corporate Office:

6501 Legacy Drive, M.S. 4105
Plano, Texas, 75024
www.jcp.com
Point of contact: Mr. Gregory M. Bair
Assistant General Counsel, Labor and Employment
Legal Department
(972) 431-5353 – Office
(972) 531-5353- Fax
gbair@jcp.com

FLSA Nursing Mothers Narrative

COVERAGE:

Subject firm J. C. Penney Corporation, Inc. dba JCPenny (Visalia, California) is a publicly traded corporation. J. C. Penney Corporation, Inc. is a subsidiary of JCPenny Company, Inc. which is the holding company that does not employ employees. **See Exhibit D-14.** The firm is a national retail chain store with 890 branches located in 49 States and in Puerto Rico. J. C. Penney Corporation, Inc. is a Delaware corporation incorporated on January 27, 2002. **See Exhibits C-1-a, D-97.** The firm is operated by a Board of Directors, **see Exhibit C-5.** The investigation was limited to the Visalia, California JCPenny store where the complainant was employed due to no evidence of systemic issues.

The firm's General Store Manager is considered to be 203(d) employers (ER) as (b) (6) hires and fires employees in consultation with H.R., makes the day-to-day business decisions and is responsible for overseeing all staff at the Visalia branch. **See Exhibit C-1-a.**

The firm employs approximately (b) (4) employees nationwide and employs (b) (4) employees at the Visalia JCPenny

store. See Exhibits, C-1-a, D-97, E-5. The firm's annual dollar volume for 2015 was (b) (4) and for 2016 it was (b) (4) and for 2017 it was approximately the same annual revenue. See Exhibits C-3-C-4. The employees regularly handle products that have moved in interstate commerce, (b) (4)

See Exhibit C-1-b, E-6-E-7. All employees of the firm are covered on an enterprise basis under Section 203(s)(1)(a) for the investigative period.

Mapping: See paragraph above.

Investigation Period: from 07/21/16 to 07/20/18.

MODO: The firm is a multiunit enterprise and the main office is located in Plano, Texas. The MODO is the Texas DO. (b) (7)(E)

See Exhibits D-114-D-119.

EXEMPTIONS:

None claimed. The complainant is an hourly, non-exempt employee and is subject to Section 207 of the Act. The complainant is entitled to protection under the nursing mother provisions of Section 207(r). See Exhibits B-1-a and D-4.

STATUS OF COMPLIANCE:

Reason for investigation:

This investigation was initiated (b) (7)(E) (b) (6), (b) (7)(C) (b) (7)(E) not being provided with all breaks when needed to express milk. (b) (7)(E) as noted below. (b) (6), (b) (7)(C) also (b) (7)(E) being denied FMLA leave for baby bonding time; (b) (7)(E)

(b) (7)(E)

(b) (6), (b) (7)(C) (b) (7)(E) (b) (6), (b) (7)(C) is a nursing mother who needs to express milk for (b) (6), (b) (7)(C) child. It is less than 1 year after the child's birth. See Exhibits B-1-a – B-1-e, D-1.

Prior History: The firm has extensive history with Wage and Hour. However, there is no history of the subject branch. See Exhibits D-120 - D-126.

Section 206 - Minimum Wage: No violation found.

Based on employee interviews conducted and employer's time and payroll records reviewed, the firm paid all employees at least the Federal MW of \$7.25 per hour for all hours worked. See Exhibits B-2-B-3, C-1, D-16-D-67.

Section 207 – Overtime

According to employee interviews conducted and employer's time and payroll records reviewed, most of the firm's employees work part time and did not work more than 40 hours in a work week. However, the firm pays time and a half the rate of pay for hours worked above of 40 in a work week. See Exhibits B-2-B-3, C-1, D-16-D-67.

Section 207(r)(1)(A) – A Reasonable Break Time: Violation found.

(b) (6), (b) (7)(C) (b) (7)(E) was not able to take reasonable breaks to express milk because there was no one to relieve (b) (6), (b) (7)(C) on breaks. (b) (6), (b) (7)(C) indicated that (b) (6), (b) (7)(C) supervisor told (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) had to find a replacement to cover (b) (6), (b) (7)(C) shifts. (b) (6), (b) (7)(C) indicated that (b) (6), (b) (7)(C) worked at a one person department and sometimes no one was available to relieve (b) (6), (b) (7)(C) for breaks. (b) (6), (b) (7)(C) also stated that when (b) (6), (b) (7)(C) took breaks sometimes (b) (6), (b) (7)(C) waited 20-30 minutes to be relieved for break. See Exhibits B-1, C-1, C-1-a, D-1, D-9-D-13, D-97-D-98.

Time line of events (See Exhibit D-1)

(b) (6), (b) (7)(C) was on leave for the birth of (b) (6), (b) (7)(C) child and on paid State Disability
(b) (6), (b) (7)(C) returned to work from leave
(b) (6), (b) (7)(C) went on leave of absence for baby bonding
(b) (6), (b) (7)(C) did not return to work after being on leave
(b) (6), (b) (7)(C) resigned
(b) (6), (b) (7)(C) filed anonymous complaint with JCPenny's corporate office
(b) (6), (b) (7)(C) (b) (7)(E)

2/15/18- Corporate Office Investigated (b) (6), (b) (7)(C) (b) (7)(E)

2/22/18- Corporate Office completed investigation and in-part admitted to (b) (6), (b) (7)(C) (b) (7)(E)

Other Nursing Mothers

(b) (6), (b) (7)(C) (b) (7)(E) (b) (6), (b) (7)(C), a mother who had recently returned from maternity leave was

expressing milk. WHI attempted to reach (b) (6), (b) (7)(C) but (b) (6), phone number was no longer in service. WHI also mailed (b) (6), (b) (7)(C) a contact me letter, but (b) (6), was non-responsive. See Exhibits B-1-B-3, C-1, D2-D-8, E-2, E-4.

WHI interviewed a current nursing mother, (b) (6), (b) (7)(C) confirmed that (b) (6), was able to take all necessary breaks to express milk. See Exhibits B-2, D-9.

Section 207 (r)(1)(B): - A Place Shielded from View and Free from Intrusion: No violation found.

The firm has three designated spaces for expressing milk. These spaces are the Assistant Manager of Operations office, Salon Manager's office, and Assistant Manager of Human Relations office. See Exhibits B-1-B-2, C-1, D-71-D-95.

(b) (6), (b) (7)(C) stated that (b) (6), used the Human Resource Office to express milk or whatever room was available at the time. Based on WHI's tour of the designated spaces and (b) (6), (b) (7)(C) interview statement, the space used was free from intrusion and the room could be locked from the inside. (b) (6), (b) (7)(C) indicated that no one had attempted to open the door while expressing milk. WHI confirmed that the room was shielded from view. See Exhibits B-1, C-1, D-71-D-95.

(b) (6), (b) (7)(C) stated during (b) (6), interview that (b) (6), expresses milk in the Salon Manager's Office and that the room locks from the inside and it is free from intrusion. This was confirmed during the tour of the designated space. See Exhibits B-2, D-9, D-75, D-83-D-88.

The firm has a lactation policy in place. See Exhibit D-9. The firm provides a sink to wash equipment, outlets for space, and two refrigerators to store milk. See Exhibits B1-B2, C-1, D-75, D-80-D-82.

Section 211 – Recordkeeping: No violation found.

The firm kept and maintained complete and accurate records of hours worked as required by Regulation Part 516.2. See Exhibits C-1, D-16 –D-32.

Section 212 - Child Labor: No violation found.

According to the firm's attorney, the firm employed five minors over the age of 16 years. The firm provided a record of all of the minors' date of birth. The firm was found to have not employed any minors contrary to the CL Hazardous Occupations (HOs). See Exhibits D-97, D-106.

DISPOSITION:

A final conference was held by telephone with Gregory Bair, Attorney on 08/30/18 at the Sacramento District Office. All violations were discussed in detail. Liquidated damages were discussed.

Section 207(r)(1)(A) – A Reasonable Break Time:

Mr. Gregory Bair stated that the reason the violation occurred is that the manager was not aware of the Lactation Policy in place. The manager should have not made employee find (b) (6), own coverage for breaks to express milk. In regards to future compliance, all managers were trained on Nursing Mother's requirements as of two weeks ago. The managers will be required to reach out to employees that are coming back from maternity leave and to inform them of the Nursing Mothers requirements. The manager will ensure that an associate relieves the nursing mother for breaks. If an associate is not available to relieve nursing mother for a break, the manager will be required to relieve nursing mother for breaks to express milk. The Nursing Mothers requirements fact sheet will be provided to managers as a reference. The firm agreed to comply in the future with Nursing Mothers requirements as well as the FLSA requirements. **See Exhibit E-1.**

Mr. Gregory was advised that to comply in the future the firm must: 1) Pay all non-exempt employees at least the MW; 2) Pay all non-exempt employees at least T-1/2 for hours worked in excess of forty in a workweek; 3) Keep and maintain records as required by Part 516; and 4) Comply with all applicable CL regulations.

According to investigation findings, (b) (6), (b) (7)(C) was denied FMLA because (b) (6), was not eligible due to not meeting the hours worked requirement of 1,250 hours worked. **See Exhibits D-1, D-98.**

(b) (6), (b) (7)(C) was advised of the results of this investigation on 09/06/18.

Recommendations: I recommend that this case be administratively close with no further action.

The following publications were discussed and emailed on 08/30/18: Wage Hour Division web links to Regulation part 516, 541, 570, 785, 778; and Fact #73- Nursing Mothers Requirements.

The HRG, and Fact Sheets # 44 and 77a were emailed on 7/13/18 and were discussed by telephone with Attorney during IC on 8/17/18.

(b) (6), (b) (7)(C)

JCPenny Case ID: 1847554

Wage & Hour Investigator
September 07, 2018

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1844848 Originating District: Phoenix District Office
Local Filing Number: 2018-279-11269 Investigating District: Phoenix District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 02/01/2018
Assignment Date: 02/01/2018

Employer Information

Trade Name: 2B Wireless Legal Name: 2B Wireless, LLC
Address: 1680 S. Pacific Ave. Suite 102 EIN: 88-0511977
Yuma, AZ 85365 County: Yuma
NAICS Code: 45399
No. Of Employees: (b) (6)

Investigation Information

Period Investigated From: 02/24/2017 BNPI:
To: 02/23/2018 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☒
Criminal Action: ☐ BW Payment Deadline:
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

14.25 hrs limited FLSANM/CL; COV: 3(s)(1)(a)/EE eligible for OT under sec. 7; VIO: Failure to provide adequate space; ER ATC and to future compliance under FLSANM on 2/23/18/ER remedied problem and made accomodations for adequate space ; First FLSANM investigation for ER REC: Admin closure.

WHI Signature: _____ Date: 04/18/2018

Reviewed By: _____ Date: _____

FLSANM Narrative

COVERAGE:

Subject firm is a mobile wireless retail company. The firm is an exclusive dealer for T-Mobile. A second complaint based investigation was opened for FLSA issues concurrently to this case, case id: 1844274. The subject firm was incorporated in the State of Arizona on 07/22/2002 (Exhibit C-5). The firm has 35 locations in Arizona (Exhibits C-4 to C-4-b). The corporate office is located at 9815 N. Metro Parkway, Phoenix, AZ 85015.

Mr. Ali Salehi (owner), Barbara Robinson (HR Manager), Alex Han (Payroll Manager) and J. Mark Riddle (CPA) provided the following information on February 23, 2018. Mr. Michael Faraji is (b) (4) owner of the firm. The other (b) (4) is owned by 2B Partners, LLC that is made up of Mr. Salehi and three silent partners. Mr. Salehi is the CEO of the firm and is responsible for significant decision making including payroll decisions and working conditions. Mr. Faraji also plays a part in some of the decision making for the firm when necessary but Mr. Salehi handles the day to day operations (Exhibit C-1). Mr. Salehi and Mr. Faraji are the 203(d) employer for purposes of this investigation. Mr. Salehi provided tax returns that showed the following ADV: (b) (4) FY 2015, (b) (4) FY2016, and projected similar figures for FY2017 (Exhibits C-2 to C-2-i). Enterprise coverage under section 203(s) (1)(a) of the Act is applicable, two or more employees regularly handle goods move in interstate commerce including iPhones from China and Samsung products form Korea. All employees regularly handle credit cards on a daily basis and are also individually covered. Further, for purposes of determining coverage under the break time requirements for nursing mothers, the subject firm employs well over 50 employees.

This investigation is limited to FLSA Section 207(r) "Break Time for Nursing Mothers: during the period February 24, 2017 through February 23, 2018.

Exemptions:

Not applicable. (b) (6), (b) (7)(C) is a sales associate and a non-exempt employee paid on an hourly basis and is therefore subject to Section 7 of the FLSA and the protections of the Break Time for Nursing Mothers provision of the FLSA (Exhibit C-1).

Status of Compliance

Prior History:

Case ID# 1561961: Enterprise coverage, OT violations found. ER failed to pay OT to non-exempt salary EEs and hourly EEs. Twelve EEs due \$5,223.53. FC on 5/5/2011 at Est.; met with General Manager, Ali Salehi, advised of findings. ER ATC/ATP BWs by 6/3/2011.

Case ID# 1766426: Enterprise Coverage. Viols, Employer did not pay overtime for hours over 40 in a work week. Vio substantiated due to ER claiming 7i exemption;ER was not applying exemption correctly. BWof \$183.04.ER agreed to provide payment to PDO by 05/01/2016, for 282 EE's total of \$71,159.35. Refer to case: 1766430 for complete BW's. Conclude upon review

Case ID# 1766430: Enterprise Coverage. Viols, Employer did not pay overtime for hours over 40 in a work week. Viols were substantiated due to ER claiming 7i exemption;ER was not applying exemption correctly. .ER agreed to provide payment to PDO by 05/01/2016, for 282 EE's total of \$71,159.35

MODO: Phoenix District Office is the MODO. (b) (7)(E)
(Exhibit D-1).

Reason for the investigation: (b) (6), (b) (7)(C) (b) (7)(E) a violation of the Patient Protection and Affordable Care Act amendment to the FLSA (Break Time for Nursing Mothers). (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) is currently a sales associate at one of the company's locations located at 1680 S. Pacific Ave. Suite 102, Yuma, AZ 85365. (b) (6), (b) (7)(C) has been working for the company (b) (6), (b) (7)(C) (b) (7)(E) 2B Wireless, LLC violated (b) (6), (b) (7)(C) nursing mother rights by failing to provide an adequate private space to pump milk. (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) had brought up (b) (6), (b) (7)(C) concerns about adequate space to representatives of the company and that they had failed to provide (b) (6), (b) (7)(C) answers and accommodation (exhibit: (b) (7)(E)).

Timeline (Exhibits D-6 to D-6-f):

- (b) (6), (b) (7)(C) had a baby (b) (6), (b) (7)(C) and returned to work (b) (6), (b) (7)(C). When (b) (6), (b) (7)(C) returned to work (b) (6), (b) (7)(C) didn't tell management about (b) (6), (b) (7)(C) need to pump because (b) (6), (b) (7)(C) didn't want to cause any issues, during this time (b) (6), (b) (7)(C) would pump outside of work hours.

- (b) (6), (b) (7)(C) started to become uncomfortable at work because (b) (6), (b) (7)(C) was not pumping during work hours. At this time (b) (6), (b) (7)(C) decided to reach out to the company to inform them of the need to pump during work hours. On 12/13/2017, (b) (6), (b) (7)(C) sent an email to (b) (6), (b) (7)(C) informing (b) (6), (b) (7)(C) of (b) (6), (b) (7)(C) situation and if (b) (6), (b) (7)(C) had any recommendations on where (b) (6), (b) (7)(C) could pump. (b) (6), (b) (7)(C) responded on 12/14/2017 and suggested the bathroom. On 12/15/2017, (b) (6), (b) (7)(C) responded and stated that the restroom was unhygienic and that there was no place to plug in the machine. (b) (6), (b) (7)(C) then told (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) would get together with HR representative Barbara Robinson to come up with a solution. (b) (6), (b) (7)(C) later contacted (b) (6), (b) (7)(C) and told (b) (6), (b) (7)(C) to pump wherever (b) (6), (b) (7)(C) felt comfortable. (b) (6), (b) (7)(C) indicated that the only options were the restroom and the storage room. The storage room was not option due to the fact that there is no privacy in that room and other employees are constantly walking in and out of the room. At that time (b) (6), (b) (7)(C) decided (b) (6), (b) (7)(C) car was the best option. On 12/28/2017, (b) (6), (b) (7)(C) sent an email to (b) (6), (b) (7)(C) following up and informing (b) (6), (b) (7)(C) of the FLSANM requirements and received no response. (b) (6), (b) (7)(C) followed up with the company again, this time sending a message to (b) (6), (b) (7)(C) who works at the corporate office on 1/2/2018, who didn't have any suggestions. (b) (6), (b) (7)(C) failed to respond to (b) (6), (b) (7)(C) after that date. (b) (6), (b) (7)(C) sent a follow up text on 1/11/2018 to which she (b) (6), (b) (7)(C) no response. (b) (6), (b) (7)(C) (b) (7)(E) and described (b) (6), (b) (7)(C) situation to WHI (b) (6), (b) (7)(C) WHI (b) (6), (b) (7)(C) already had a current case open on the company for possible FLSA issues.

An initial conference was held on February 23, 2017 by WHI (b) (6), (b) (7)(C) with Mr. Ali Salehi (owner), Barbara Robinson (HR Manager), Alex Han (Payroll Manager) and J. Mark Riddle (CPA). WHI asked ER representatives why (b) (6), (b) (7)(C) had not been provided a private place to pump milk. They indicated that they weren't aware of (b) (6), (b) (7)(C) issue. WHI (b) (6), (b) (7)(C) explained that (b) (6), (b) (7)(C) had made repeated attempts to have the issue resolved with no response. Ms. Robinson stated that that information never filtered up to her and that it would be something that they would take care of immediately. WHI (b) (6), (b) (7)(C) thoroughly explained the requirements of FLSANM to the all the representatives present during this meeting. They indicated that the break time would not be a problem and that be given the time (b) (6), (b) (7)(C) needs to pump. They did indicated concerns with providing a private space for (b) (6), (b) (7)(C), due to the lack of space in the back room of the store that (b) (6), (b) (7)(C) works in, but that they would make it work. They suggested a screen for privacy from the security cameras and other employees. In addition, they state that they would allow (b) (6), (b) (7)(C) to lock the door to the storage room while she pumped. WHI (b) (6), (b) (7)(C) requested that they provide proof of the accommodations once they were made.

Section 7(R)(1)(A)-Reasonable Break Time: No violation. (b) (6), (b) (7)(C) did not indicate any issues with given reasonable break time to pump.

Section 7(R)(1)(B)-A Place, Other than a Bathroom, Shielded from View and Free from Intrusion: Violation found. The employer failed to follow up on requests from (b) (6), (b) (7)(C) for accommodation of private area other than the bathroom for pumping.

Section 15(A)(3)-Prohibiting Retaliation Under the FLSA: No violation. (b) (6), (b) (7)(C) still currently works for the company and no retaliatory action was taken by the employer.

Disposition

Only one face to face conference was held with the employer representatives and WHI (b) (6), (b) (7)(C) on February 23, 2018, regarding this issue. During this conference, employer representative Ali Salehi agreed to future compliance and to ensure make the requested and future accommodations to employees who may have the need to nurse. On 3/14/2018, Ms. Robinson provided a photo showing the privacy screen purchased for (b) (6), (b) (7)(C) that would be place in the back room (Exhibit D-5-h). Review of the photo showcased openings in the screen that failed to provide complete privacy. Ms. Robinson was informed of the concerns pertaining to the openings on the screens and indicated she would have the openings covered. On 4/5/2018, Ms. Robinson sent a photo of the modification made to the privacy screen. The privacy screen's openings had been covered by an opaque material (Exhibit D-5-e). On 4/6/2018, WHI (b) (6), (b) (7)(C) contacted Ms. Robinson to reiterate the requirements under FLSANM. During this conversation Ms. Robinson acknowledged that the company would be in future compliance with FLSANM. She stated that similar privacy screens would be purchased and be made available to all locations with nursing employees along with allowing adequate break time for these employees to nurse.

Recommendations

(b) (7)(E) It is recommended that the case be administratively closed.

(b) (6), (b) (7)(C) Notification

(b) (6), (b) (7)(C) was notified of the results on the investigation on 04/13/2018.

Publications

The following publications were discussed and provided at the initial conference: Handy Reference Guide, Fact Sheet #44, 73 and 77A.

(b) (6), (b) (7)(C)

Wage and Hour Investigator
04/13/2018

<p align="center">WHISARD Compliance Action Report</p>	
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U.S. Department of Labor
Wage and Hour Division

Case ID:	1751806	Originating District:	Honolulu District Office
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Case ID:	1751806	Originating District:	Honolulu District Office
Local Filing Number:	2015-198-01353	Investigating. District:	Honolulu District Office
WHMIS Case Number:		Lead Investigator:	(b) (6), (b) (7)(C)
Registration Date:	02/02/2015		
Assignment Date:	02/02/2015		

<u>Employer Information</u>	
Trade Name:	Hawaii Executive Transportation
Address:	PO BOX 11526
	Lahaina, HI 96761
Legal Name:	Maui Executive Transportation, LLC
EIN:	99-0280031
County:	Maui
NAICS Code:	485999
No. Of Employees:	(b) (4)

<u>Employer Information</u>	
Trade Name:	Hawaii Executive Transportation
Address:	PO BOX 11526
	Lahaina, HI 96761
Legal Name:	Maui Executive Transportation, LLC
EIN:	99-0280031
County:	Maui
NAICS Code:	485999
No. Of Employees:	(b) (4)

Investigation Information			
Period Investigated From:	02/07/2013	BNPI:	
To:	02/06/2015	Reinvestigation:	<input type="checkbox"/>
Investigation Type:	(b) (7)(E)	Recurring Violation:	<input type="checkbox"/>
Investigation Tool:	Full Investigation	Future Compliance Agreed:	<input checked="" type="checkbox"/>
Compliance Status:	Agree to Comply	Involved in AG:	<input type="checkbox"/>

Investigation Information			
Period Investigated From:	02/07/2013	BNPI:	
To:	02/06/2015	Reinvestigation:	<input type="checkbox"/>
Investigation Type:	(b) (7)(E)	Recurring Violation:	<input type="checkbox"/>
Investigation Tool:	Full Investigation	Future Compliance Agreed:	<input checked="" type="checkbox"/>
Compliance Status:	Agree to Comply	Involved in AG:	<input type="checkbox"/>

<u>Recommended Action:</u>			
BWFS:	<input checked="" type="checkbox"/>	RO/NO Review:	<input type="checkbox"/>
CMP:	<input type="checkbox"/>	Follow Up Investigation:	<input type="checkbox"/>
Litigation:	<input type="checkbox"/>	Other Action:	<input type="checkbox"/>
Civil Action:	<input type="checkbox"/>	Denial of Future Certificate:	<input type="checkbox"/>
Criminal Action:	<input type="checkbox"/>	BW Payment Deadline:	05/01/2015
Submit For Opinion:	<input type="checkbox"/>	Trailer forms attached:	<input type="checkbox"/>

<u>Recommended Action:</u>			
BWFS:	<input checked="" type="checkbox"/>	RO/NO Review:	<input type="checkbox"/>
CMP:	<input type="checkbox"/>	Follow Up Investigation:	<input type="checkbox"/>
Litigation:	<input type="checkbox"/>	Other Action:	<input type="checkbox"/>
Civil Action:	<input type="checkbox"/>	Denial of Future Certificate:	<input type="checkbox"/>
Criminal Action:	<input type="checkbox"/>	BW Payment Deadline:	05/01/2015
Submit For Opinion:	<input type="checkbox"/>	Trailer forms attached:	<input type="checkbox"/>

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSA	
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Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSA Totals:	1	1	\$845.63	\$845.63	\$0.00	\$0.00	

Total Violations Under FLSA:	2		\$0.00
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WHISARD Compliance Action Report

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FMLA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FMLA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	1	Unduplicated Employees Agreed:	1
Total Amount BWs Computed:	\$845.63	Total Amount BWs Agreed:	\$845.63
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

Coverage:3s1Aii, ADV exceeds \$500K + ees handle goods moved through commerce. Pd of Inv- 2/07/13-2/06/15. ER has less than 50 ees and claimed undue hardship for nursing mothers requirement. (b) (6), (b) (7)(C) Violation found under 207 due to uncompensated OT hours. Disp: FC held on 4/14/15. ER ATC and ATP total back wages due to (b) (6) for uncompensated OT hours = \$845.63. HRG, FS 28D, 44 and 73 provided.

WHI Signature: _____ Date: 04/23/2015

Reviewed By: _____ Date: _____

Maui Executive Transportation, LLC
dba Hawaii Executive Transportation
P.O. Box 11526
Lahaina, HI 96761

CF#1751806
EIN# 99-0280031

FLSA NARRATIVE

COVERAGE

Reason for Investigation: The investigation was initiated (b) (7)(E) (b) (6), (b) (7)(C) (b) (7)(E) violations of the break time for nursing mothers due to the employer failing to provide a space for (b) (6), (b) (7)(C) to express (b) (6), (b) (7)(C) milk. (b) (6), (b) (7)(C) (b) (7)(E) violations under the Family Medical Leave Act for the employer failing to allow time off for the purpose of bonding with (b) (6), (b) (7)(C) newborn child. (b) (6), (b) (7)(C) also (b) (7)(E) overtime violations due to employer failing to pay for all hours worked. (See (b) (7)(E) and exhibit B-4).

203(s)1(A)(i)&(ii): Since the dollar volume annually exceeds 500,000 dollars and at least 2 full time workers are employed and employees handle goods that have moved in commerce, enterprise coverage has been established. See information below in regard to evidence that supports this basis for coverage as well as other relevant background data:

Period for this Investigation: 02/07/2013 through 02/06/2015

Prior History: Employer has no prior history with the U.S. Department of Labor's Wage and Hour Division.

Nature of Business: The firm provides transportation services for customers arriving at the Kahului Airport on the island of Maui. Additionally, the firm provides hotel taxi service to the customers of the Sheraton and Hyatt hotels through the use of independent contractors on the island of Maui (See exemption section and exhibit D-5).

MODO INFORMATION: The firm is headquartered in Lahaina, HI. The main office of the subject firm is located within the jurisdiction of the Honolulu District Office. The firm has only one establishment

and is not part of a larger enterprise. (b) (7)(E) (See exhibits C-1 thru C-7).

Business Structure: Maui Executive Transportation, LLC was incorporated in Hawaii on June 4, 1990 and is doing business as Hawaii Executive Transportation. The company was originally incorporated as Armijo, Inc. Richard Armijo is the President and owner the firm and is engaged in its daily operations and management. (See exhibits C-1 thru C-7).

Branch Establishments: There is only one office establishment located in Lahaina, Hawaii. However, employees perform transportation services at three airports throughout Hawaii. This includes the Kahului, Kona and Lihue airports (see exhibits C-1 thru C-7).

Workforce: The enterprise employs approximately (b) (4) employees for all locations (See exhibits A-1, D-4, D-5 and D-7).

Interstate Commerce: One example of employees handling goods that have moved through interstate commerce is the firm's purchase of Dell Computers. These computers were built in Round Rock, Texas and shipped to Hawaii.

Annual Dollar Volume: The ADV for each of the last three years is as follows:

2014-	(b) (4)	
2013-	(b) (4)	
2012-	(b) (4)	(See exhibits C-1 thru C-3).

Section 203(d) Employer: (b) (6), (b) (7)(C) is actively engaged in the management of the firm to include overseeing the firm's manager along with overseeing the firm's overall operations. (b) (6), (b) (7)(C) has hired and fired employees and set the rate of pay for each employee. All financial obligations of the firm must be approved by (b) (6), (b) (7)(C). Therefore, (b) (6), (b) (7)(C) is considered the 203d Employer under the Act. (See exhibits B-1 thru B-4 and C-1 thru C-7).

Investigation Tool: Full Investigation.

EXEMPTIONS

Employment Relationship: The firm claimed that the hotel taxi drivers are independent contractors. The following criteria were tested to see if an employment relationship existed. (See exhibits B-1 to B-3 and D-5).

1. The extent to which the services rendered are an integral part of the principal's business. The taxi services that the alleged contractors provide are an additional service through a contract with the Sheraton and Hyatt hotels. The firm's primary business is to provide a shuttle service for customers arriving at the Kahului, Kona and Lihue airports and these shuttle services are provided by the firm's regular employees and not by the alleged contractors. The taxi services of the alleged contractors are not an integral part of the firm's principal business.
2. The permanency of the relationship. The interviews revealed that the alleged contractors had been working as a hotel taxi driver for months or years depending on the individual. However the alleged contractors are free to provide services to other companies and are free to engage in regular employment with another employer. Some of the alleged contractors do hold a full time position with a separate employer and provide taxi services as a means to supplement their income.
3. The amount of the alleged contractor's investment in facilities and equipment. All the vehicles used by the alleged contractors are owned by the alleged contractors. The company does not supply any vehicles to the alleged contractors.
4. The nature and degree of control by the principle. The company does not dictate the hours to be worked by the alleged contractors. The alleged contractors are free to choose their own schedule to include which days to work, the amount of hours to work and when to take breaks.
5. All alleged contractors' opportunities for profit and loss. The alleged contractors do not have any investments such as insurance or bonding. The alleged contractors do earn profits or suffer losses based on the amount of customers the alleged contractor provides services to. All money collected from customers is profits of the alleged contractors. The alleged contractor pays a monthly fee to the company for being listed as a hotel taxi driver with the firm. The hotel or firm will contact the alleged contractor with opportunities to make a profit and the alleged contractor can choose whether or not to provide the services.
6. The amount of imitative, judgment or foresight in open market competition with others

required for the success of the claimed independent enterprise. The alleged contractors can advertise independently and can choose to work with other employers should they wish to.

7. The degree of independent business organization and operation. The alleged contractors do have a G.E. business license.

Based upon the above analysis, an employer/employee relationship could not be substantiated between the firm and the alleged contractors.

Section 213(a)(1): The employer claimed one exemption for the General Manager of the firm, (b) (6), (b) (7)(C). Cross reference employee interviews and payroll records did not reveal any potential violations under 29 CFR 541.100. (See exhibits A-1 and B-4).

STATUS OF COMPLIANCE

Investigative Result of (b) (6), (b) (7)(C) (b) (7)(E) (b) (6), (b) (7)(C) nursing mother (b) (7)(E) as the employer was able to show undue hardship. Additionally, the employer did allow (b) (6), (b) (7)(C) to drive home to nurse (b) (6), (b) (7)(C) child and paid for the travel time and time spent at home nursing. (b) (6), (b) (7)(C) (b) (7)(E) under FMLA (b) (7)(E) as the firm has not had a minimum of 50 employees within 75 miles during the preceding or current calendar year. The employee's (b) (7)(E) of retaliation (b) (7)(E) as the employer made reasonable accommodations for (b) (6), (b) (7)(C) regarding break time for nursing mothers even though the employer was able to show an undue hardship. Additionally, (b) (7)(E) the termination of the employee as the firm was able to show that (b) (6), (b) (7)(C) had been terminated due to (b) (6), (b) (7)(C) attendance record and not as a result of the investigation. The overtime (b) (7)(E) of (b) (6), (b) (7)(C) were (b) (7)(E) in that (b) (6), (b) (7)(C) was not compensated for the time spent at home making signs. Time and a half was found due for the unpaid time as a result of the employer failing to pay for all hours worked. Total back wages of \$845.63 was found due for (b) (6), (b) (7)(C). (See (b) (7)(E), exemption section above and exhibits A-1, A-2, B-4 and D-2 thru D-7).

Section 206: No violations found. Review of the pay records and employee interviews revealed that employees are paid at least the applicable minimum wage (see exhibits A-1, B-1 thru B-4 and D-7). The State of Hawaii Wage Standards Division is pursuing the unpaid time that (b) (6), (b) (7)(C) spent making

signs in non-overtime workweeks. (b) (6), (b) (7)(C) had been paid in excess of the applicable federal minimum wage; therefore no violations were found under this Section for unpaid time in non-overtime workweeks.

Section 207 Overtime Violations The overtime (b) (7)(E) (b) (6), (b) (7)(C) were (b) (7)(E) in that (b) (6), (b) (7)(C) had not been compensated for the time spent at home preparing signs for the day's customers. (b) (6), (b) (7)(C) was required to display a sign when greeting customers at the airport. (b) (6), (b) (7)(C) had been directed by (b) (6), (b) (7)(C) employer to make these signs for greeting customers and was not given the opportunity to do this at the firm's establishment. In addition, (b) (6), (b) (7)(C) was unable to make the signs when working at the airport location since the employer does not own or operate the facility. (b) (6), (b) (7)(C) spent an average of 15 minutes per day preparing signs before the start of (b) (6), (b) (7)(C) shift. This resulted in an overtime violation as the employer did not start paying for this additional time until a second greeter was hired in early 2015. At that time, the new greeter refused to spend time making signs at home unless they were going to be compensated for the time. No other overtime violations were found (See exhibits A-1, A-2, B-4, D-6 and D-7).

(b) (7)(E)

Total back wages of \$845.63 was found due to the complainant. (See exhibit A-2).

Section 207 (r) break time for nursing mothers: Based on the interviews and records provided by employer, the firm is in compliance of this section.

Time of breaks:

According to fact sheet #73, *Employers are required to provide a reasonable amount of break time to express milk as frequently as needed by the nursing mother. The frequency of breaks needed to express milk as well as the duration of each break will likely vary.*

Employees interviews and timeline of events above indicated that there is no evidence (b) (7)(E) that the firm stopped (b) (6), (b) (7)(C) from taking a break, nor limited the length and frequency of breaks that (b) (6), (b) (7)(C) needed to express milk. The employer allowed (b) (6), (b) (7)(C) to return home to nurse or express (b) (6), (b) (7)(C) milk and paid for the whole time the employee was away from work. Therefore, no violation

(b) (7)(E) . (See exhibits A-1, B-4, D-6 and D-7).

Compensation of breaks:

According to fact sheet #73, *employer is not required under FLSA to compensate nursing mothers for breaks taken for the purpose of expressing milk. The FLSA requirement of break time for nursing mothers to express breast milk does not preempt State laws that provide greater protections to employees (for example, providing compensated break time...)*

Since the employer was unable to offer a space that met the statutory requirements when the employee first returned to work after the birth of (b) (6), (b) (7)(C) child, the employer allowed the employee to return home to nurse or express milk as needed. The employer would compensate the employee for the travel time and total time spent at home nursing (b) (6), (b) (7)(C) child or expressing milk. Therefore, no violation was found for this issue. (See exhibits A-1, B-4, D-6 and D-7).

Location of the breaks:

WHI was unable to conduct a site visit to the island of Maui before (b) (6), (b) (7)(C) was terminated from employment. (b) (6), (b) (7)(C) did not work out of the firm's establishment. (b) (6), (b) (7)(C) worked at the Kahului Airport. The firm does not rent or own any space at the Kahului Airport. After the firm discussed the situation with the airport, airport management offered a room that is used for nursing by the airport employees. WHI (b) (6), (b) (7)(C) was unable to confirm whether the space offered was shielded from view and if it was free from any intrusion from co-workers and the public. Therefore, WHI (b) (6), (b) (7)(C) was unable to determine if the room met the statutory requirement. (See exhibits A-1, B-4, D-2, D-3, D-6 and D-7).

Undue Hardship: Even though the firm has (b) (6), (b) (7)(C) employees, the employer claimed undue hardship regarding the break time for nursing mothers. (b) (6), (b) (7)(C) works in the field at a site that is not owned or operated by the employer. (b) (6), (b) (7)(C) works at the Kahului Airport as a greeter for arriving customers. The employer stated that in accordance with their contract under the State of Hawaii Department of Transportation (HDOT), the employer is not allowed to erect a site or alter any existing sites to meet the nursing mothers' requirement. The employer discussed the situation with local airport management and was offered a space for the employee to use that is used by employees of the airport for the same purpose. WHI (b) (6), (b) (7)(C) was unable to visit the site to determine whether or not it met the requirements. Additionally, the undue hardship was discussed with Director of Enforcement, Richard

Longo on 3/4/15 who stated that there have been other situations like this one whether DOL granted the undue hardship. No further discussion was conducted by DOL as the employee was terminated on 3/10/15 before DOL could conduct a site visit. (See exhibits A-1, B-4, D-2, D-3, D-6 and D-7).

Section 211: A record keeping violation occurred when the firm failed to maintain accurate time records for the complainant. (See exhibits A-1, B-4, D-6 and D-7).

Section 212: No employment of minors was found in employment records (b) (7)(E) (See exhibits A-1, B-1 thru B-4 and D-4).

Section 215: (b) (6), (b) (7)(C) (b) (7)(E) retaliation throughout the investigation. (b) (6), (b) (7)(C)(b) (7)(E) the employer terminated (b) (6), (b) (7)(C) A call to the employer confirmed that the employee was still employed by the firm. (b) (6), (b) (7)(C) later (b) (7)(E) the employer was changing (b) (6), (b) (7)(C) shift due to the investigation. A call to the employer confirmed that the employee's shift was unchanged, that (b) (6), (b) (7)(C) was still assigned as greeter one. However, the start of the shift time varied depending on when customers arrive at the airport. The employer was able to show that this was the same policy before the investigation with DOL per review of (b) (6), (b) (7)(C) time records. (b) (6), (b) (7)(C) was later terminated (b) (6), (b) (7)(C) due to lack of attendance by (b) (6), (b) (7)(C) had called out sick more than six days in the last 30 days. The employer claimed they could not operate without the greeter one position and that the termination was unrelated to the investigation. Per review of the attendance records and discussion with (b) (6), (b) (7)(C); (b) (7)(E) (b) (6), (b) (7)(C) had been terminated due to lack of attendance. (b) (6), (b) (7)(C) confirmed that the reasons (b) (6), (b) (7)(C) called out sick varied to include ear infections and weather conditions. (See exhibit D-2).

FMLA 825.300: (b) (6), (b) (7)(C) (b) (7)(E) violations under FMLA for the employer failing to allow (b) (6), (b) (7)(C) time for the purpose of bonding with (b) (6), (b) (7)(C) newborn child. (b) (6), (b) (7)(C) later (b) (7)(E) the employer violated (b) (6), (b) (7)(C) rights under FMLA when (b) (6), (b) (7)(C) provided a doctor's note for calling out sick due to a severe ear infection. Review of the records and employee interviews revealed that the company does not have 50 employees within 75 miles. Approximately (b) (6), (b) (7)(C) employees work on the island of Maui at the Kahului Airport. (b) (6), (b) (7)(C) employees work on the island of Kona at the Kona airport and (b) (6), (b) (7)(C) employees work on the island of Kauai at the Lihue airport. The distance between Kahului and Kona is 84 miles. The distance between Kahului and Lihue is 201 miles and the distance between Kona and Lihue is 263 miles. Therefore, FMLA is not applicable to the firm. No violations found under this Section. (See exhibits A-1,

B-1 thru B-3, C-6, D-4 and D-5).

DISPOSITION

On April 14, 2015 a final conference was held by phone. Attending was the General Manager of the firm, Ilima Lua-Lokan and representing the DOL was WHI (b) (6), (b) (7)(C). WHI (b) (6), (b) (7)(C) discussed the applicable provisions of the Act. Specifically, WHI (b) (6), (b) (7)(C) discussed the violations of Sections 207 and 211.

Regarding Section 207 (OT) Violations: The firm was advised that an overtime violation occurred when the firm failed to pay for all hours worked for (b) (6), (b) (7)(C) had been directed to make signs for greeting customers and was not given the opportunity to do this at the firm's establishment. In addition, (b) (6), (b) (7)(C) was unable to make the signs when working at the airport location since the employer does not own or operate the facility. (b) (6), (b) (7)(C) spent an average of 15 minutes per day preparing signs before the start of (b) (6), (b) (7)(C) shift. The firm was advised that time and a half was found due for the unpaid time making signs. Reference was made to and a copy given of 29 CFR Part 778.

Regarding Firm's Response for immediate and future compliance: The employer claimed that the unpaid overtime was an oversight as this duty was performed at home. The firm stated that it had changed its policy when it hired a second greeter. The firm also stated that as part of the new policy, it will prepare the signs for the greeters and that the greeters would no longer be required to do this additional duty. The firm agreed to the back wages computed and agreed to future compliance.

Regarding Section 211 record keeping violations: The firm was advised that it must keep accurate time and payroll records for its employees in accordance with Section 211. The firm was advised that a violation occurred when the firm failed to keep accurate records of all the hours worked by (b) (6), (b) (7)(C). Reference was made to 29 CFR Part 516.

Regarding Firm's Response to Section 211 record keeping violations: The firm stated that it would keep all records for three years in accordance with 29 CFR Part 516.

Firm's approach for immediate and future compliance: The firm paid the back wages in full to DOL in the amount of \$845.63 on 4/22/15.

(b) (7)(E)

(b) (7)(E)

Recommendation: (b) (7)(E)

Therefore, WHI (b) (6), (b) (7)(C) recommends the case to be administratively closed.

A copy of the Back Wage and Payment Agreement is included with the file. The employer also provided a Compliance Action Plan which is included with the file. (b) (7)(E)

The employer has also been made aware, pursuant to language in the Administrative Settlement, of the Debt Collection Act.

(b) (6), (b) (7)(C) Notification: (b) (6), (b) (7)(C) was notified of the investigative results on April 10, 2015 and again on April 23, 2015 after receiving the signed agreement from the employer.

Publications Provided: Copy of CFR 516, CFR 778, CFR 785, CFR 541, CLB 101 and The Fair Labor Standards Act, the Handy Reference Guide and Fact Sheets #28D, 44 and 73.

Future Correspondence: Please send all correspondence to the firm's owner, Richard Armijo located at P.O. BOX 11526, Lahaina, HI 96761. (808) 699-2300.

Prepared and Submitted by:_____

(b) (6), (b) (7)(C)

April 23, 2015

Wage Hour Investigator
U.S. Dept. of Labor, WHD
Honolulu District Office

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1781074 Originating District: Honolulu District Office
Local Filing Number: 2016-198-01627 Investigating District: Honolulu District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 01/10/2016
Assignment Date: 01/10/2016

Employer Information

Trade Name: Guam International Airport

Legal Name: Government of Guam

Address: PO Box 8770

EIN: 98-0019794

County: Guam

NAICS Code: 48811

Tamuning, GU96931

No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 01/11/2014 BNPI:
To: 01/10/2016 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Compliance (no violations found) Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

FMLA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPS*
FMLA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPS computed do not necessarily indicate CMPS assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

(b) (7)(E) case. Part of the (b) (7)(E) Lim Inv- GIAA is A Autonomous Gov. of Guam Agency. Honolulu DO is MODO.Covg-3s1C-Public Agency. Inv Pd - 1/11/14-1/10/16. Exmpts-not tested. App Compl w/secs 6,7,11,12 and FLSNM. Frim agreed to future compliance w/FLSA and FLSNM. Rec case be closed (b) (7)(E). Pubs-see narrative

WHI Signature: _____ Date: 04/28/2016

Reviewed By: _____ Date: _____

Government of Guam

EIN: 98-001974

DBA: Guam International Airport Authority

Case #: 1781074

PO Box 8770

Tamuning, Guam 96931

Phone: (671) 646-0300

Fax: (671) 646-8823

FLSA NARRATIVE

COVERAGE

Reason for Investigation: This is a (b) (7)(E) case and (b) (7)(E)

Prior History: This is the first investigation conducted on the firm.

MODO: The main office of the subject firm, Guam International Airport Authority, is located within the jurisdiction of the Honolulu District Office. Guam International Airport Authority has only one establishment and is therefore not part of a larger enterprise. (b) (7)(E)

Nature of Business: The Guam Airport Authority was established as an autonomous instrumentality of the Government of Guam (Ex. C-2).

Section 3(d) Employer: Charles H. Ada is GIAA's Executive Manager (Exs. C-1, C-4).

He is responsible for the administration and management of GIAA. He is responsible for the daily operation of GIAA and the planning, coordination, and supervision of GIAA's employees and assets (Exs. C-1, C-2, C-4).

Therefore, Charles H. Ada is identified as GIAA's Section 3(d) employer.

Section 3(s)(1)(C): The Guam International Airport Authority was established as an autonomous instrumentality of the Government of Guam (Ex.C-2).

GIAA currently employs 237 employees in various law enforcement, administrative and maintenance occupations (Exs. A-1, B-1, C-1,C-4).

The Guam International Airport Authority is part of the Government of Guam, and, is therefore, a named and covered enterprise under this Section of the Act.

Period of Investigation: January 11, 2014 – January 10, 2016.

EXEMPTIONS

Section 213(a)(1): This is a limited investigation. No section 213(a)(1) exemptions were tested (Ex.C-1).

STATUS OF COMPLIANCE

Investigative Results of the (b) (6), (b) (7)(C), (b) (7)(E) Not applicable. This is a (b) (7)(E) case.

Profile Pay Period: January 10, 2016 to January 23, 2016 (Ex. A-1).

Section 206 (MW): Initial conference and payroll record review revealed that GIAA pays its employees in compliance with this section (Ex. A-1)

Section 207 (OT): Apparent Compliance. Initial conference and payroll record review revealed that GIAA computes and pays overtime in compliance with this section (Ex. A-1).

Section 211 (RK): Apparent Compliance. GIAA maintained all necessary payroll and time records. (Ex. A-1).

Section 212 (CL): Apparent Compliance. Initial conference, tour of establishment and payroll record review revealed that GIAA employed no minors during the investigative period. (Ex. C-1).

FMLA: The firm has an up to date FMLA policy and has an FMLA poster posted where it can be seen by all employees. No Policy review was conducted as this is a limited investigation. (Exs. C-1, D-3).

FLSNM Section 207(r): The firm had one nursing mother during the investigative period (Exs. B-1, C-1). The nursing mother was an employee of the Airport Police Division. The Airport Police utilized a training room to allow the nursing mother to express milk. The nursing mother was given a key to the training room. The training room could be locked from the inside, had electrical outlets and had no windows. The training room had tables and chairs and also a mini refrigerator to store the nursing mother's expressed milk. The employee utilized a kitchen near the training room to wash and clean her pump and bottles. The nursing mother stated that the room was free from intrusion as only one other employee had access to the room when locked. The nursing mother utilized the room for approximately one year. She expressed milk anywhere from 4-7 times a day for approximately 30 minutes each time (Ex. B-1).

At the time of the Initial Conference GIAA Executive Manager Charles Ada and Airport Services Manager Jean Arriola stated that the airport authority would like to come into compliance with the law and revise construction plans to its rest rooms inside and outside the terminal. GIAA provided a copy of the revised construction plans to Wage Hour (See exhibit D-2). GIAA said this would alleviate all tenants of the airport from providing their own room for nursing mothers, therefore, all employees of GIAA and all employees of the tenants of GIAA would have access to rooms that comply with the Break Time for Nursing Mothers section of the FLSA.

A tour of one of the newly remodeled rest rooms on April 26, 2016 revealed that GIAA constructed a nursing room that is separated from the restroom and meets all of the requirements under Section 7(r) of the FLSA.

GIAA agreed to post fact sheet #73 where it would be visible to all employees. The firm also agreed to hand out Break Time for Nursing Mother cards to the employees of GIAA. GIAA also submitted a compliance action plan for future compliance with this section.

Note: The total number of employees employed by GIAA and its tenants is approximately (b) (4) The

willingness of GIAA to accommodate not only its employees but all of the employees working at the airport go above and beyond what is required of the act.

Regarding Section 16(e): GIAA was advised that due to the compliance assistance provided on the current case any future violations of section 206 or 207 of the act in the future could result in possible penalties being levied against GIAA.

DISPOSITION

A final conference was held with the firm on February 26, 2016 at the establishment.

Present were: Cheryl Bustos (Program Coordinator) and WHI (b) (6), (b) (7)(C).

The investigative process and findings were discussed with the firm. Sections 206, 207, 211, 212 and 207(r) of the FLSA were also discussed. FLSNM was also discussed in detail with the firm.

No Fair Labor Standards Act violations were found at this time, the firm did not take exception to compliance assistance provided by WHI (b) (6), (b) (7)(C).

Regarding Section 206: The firm was advised of the current federal minimum wage of \$7.25.

Regarding Section 207: The firm was advised that it must pay time and ½ the employee's regular rate for hours worked over 40 in a work week.

Regarding Section 211: The firm was advised of the record keeping requirements of the Act.

Regarding Section 212: The Child Labor requirements of the Act were discussed with the firm.

Regarding Section 216(e): MS Bustos was advised that the firm is expected to be aware of and comply with the Minimum Wage, Overtime, Record Keeping, Child Labor and other FLSA regulations and requirements discussed.

The firm was also advised that should violations of the FLSA be discovered in the future, those can be deemed as willful violations.

Rgarding FLSNM Section 207(r): As stated in the compliance section of the narrative at the time of the Initial Conference GIAA Executive Manager Charles Ada and Airport Services Manager Jean Arriola stated that the airport authority would like to come into compliance with the law and revise construction plans to its restrooms inside and outside the terminal. GIAA provided a copy of the revised construction plans to Wage Hour. (See exhibit D-). GIAA said this would alleviate all tenants of the airport from providing their own room for nursing mothers therefore, all employees of GIAA and all employees of tenants of GIAA would have access to rooms that comply with the Break Time for Nursing Mothers section of the FLSA.

A tour of one of the newly remodeled restrooms on April 26, 2016 revealed that GIAA constructed a nursing room that is separated from the restroom and meets all of the requirements under Section 7(r) of the FLSA.

GIAA agreed to post fact sheet #73 where it would be visible to all employees. The firm also agreed to hand out Break Time for Nursing Mother cards to the employees of GIAA. GIAA also submitted a compliance action plan for future compliance with this section.

Firm's Response: Ms. Bustos stated the compliance information was greatly appreciated and GIAA will maintain compliance with the FLSA and all regulations in the future.

Recommendation: No violations were found. It is recommended that case be administratively closed with no further action.

(b) (6), (b) (7)(C) Notification: This is a **(b) (7)(E)** case.

Publications Provided: FLSA HRG; Regulations 541, 578; Fact Sheets 7, 28D, 44, 73; Break Time for Nursing Mothers information Cards; DOL Website.

Prepared and Submitted By:

(b) (6), (b) (7)(C)

Investigator (Guam AO)

April 28, 2016

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1782570 Originating District: Sacramento District Office
Local Filing Number: 2016-302-06999 Investigating District: Sacramento District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 01/28/2016
Assignment Date: 01/28/2016

Employer Information

Trade Name: St. Joseph's Medical Center
Address: 49 West Yokuts Avenue

Stockton, CA95207

Legal Name: Dignity Health
EIN: 94-1196203
County: San Joaquin
NAICS Code: 622110
No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 01/19/2016 BNPI: 0
To: 02/04/2016 Reinvestigation: ☒
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Compliance (no violations found) Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

WHISARD Compliance Action Report

Conclusions & Recommendations:

(b) (7)(E) FLSANM. COV: FLSA 3(s)(1)(B)-operation of hospital. EX: N/A. SOC: (b) (7)(E) was told to express milk during breaks/lunch & use PTO. No vios found. DISP: FC 02/17/16 via phone w/ Atty Ms. April Madison-Ramsey. ATFC. ECA signed & returned. Pubs: See narrative.

WHI Signature: _____ Date: 03/03/2016

Reviewed By: _____ Date: _____

Dignity Health
dba St. Joseph's Medical Center
EIN: 94-1196203
49 West Yokuts Avenue
Stockton, CA 95207
Ms. Ruby Mulgado, Director
(209) 956-4456

Case ID #1782570
Case File #2016-302-06999

Points of Contact:
Ms. Maggie Vega, HR Manager
1800 North California Street
Stockton, CA 95204
(209) 467-6358

Ms. April Madison-Ramsey, Attorney
Dignity Health
185 Berry Street, Suite 300
San Francisco, CA 94107
(415) 438-5613

FLSA Nursing Mothers Narrative

Reason for Investigation: This limited investigation was initiated by (b) (7)(E) (b) (6), (b) (7)(C) (b) (7)(E) (b) (6), (b) (7)(C) returned to work (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) employer was requiring (b) (6), (b) (7)(C) to use breaks and lunch to express milk. (b) (6), (b) (7)(C) further stated that once (b) (6), (b) (7)(C) accrued paid time off (PTO), (b) (6), (b) (7)(C) would have to use it for any additional time (b) (6), (b) (7)(C) took to express milk beyond (b) (6), (b) (7)(C) breaks and lunches. Violations were not substantiated.

COVERAGE:

Dignity Health's attorney, Ms. April Madison-Ramsey, provided St. Joseph's Medical Center's EIN but declined to provide any other additional requested information. The following is from the initial conference and online research:

St. Joseph's Medical Center was founded in approximately 1899 and acquired by Dignity Health in 1996. *(See Exhibit C-4)* Dignity Health functions as a not-for-profit corporation that operates hospitals and care facilities throughout the United States and is controlled by a Board of Directors. *(See Exhibit C-4)* St. Joseph's Medical Center functions as a not-for-profit, acute care hospital located in Modesto, CA. *(See Exhibit C-1)* St. Joseph's Medical Center has approximately (b) (4) employees. *(See Exhibit C-1)*

The business office for St. Joseph's Medical Center, St. Joseph's Behavioral Health Center, and Mark Twain Medical Center is the subject of this investigation and has approximately 57 employees. **(See Exhibits C-1 through C-3)** Dignity Health's Human Resources Manager Ms. Maggie Vega and third-party Optum360's Director Ms. Ruby Mulgado meet the definition of employers under Section 203(d) of the Fair Labor Standards Act because they oversee and hire employees. **(See Exhibits B-1 and C-1)** St. Joseph's Medical Center and its business office are engaged in the operation of a hospital. As such, the firm is enterprise covered under Section 203(s)(1)(B) of the Fair Labor Standards Act.

Period of Investigation: 01/19/2016 to 02/04/2016.

Prior History: This is the first investigation of St. Joseph's Medical Center in Modesto, CA by the Wage & Hour Division. There have been multiple investigations of various facilities operated under the Dignity Health name.

MODO: San Francisco, CA District Office. Dignity Health's headquarters is located in San Francisco, CA. (b) (7) (F)
(See MODO ID #42834 and Exhibit D-8)

Joint Employment:

Optum360 & Dignity Health:

Optum360 acts as a revenue cycle management provider for Dignity Health. **(See Exhibit C-1)** An analysis of the factors set forth in 29 CFR 500.20(h)(5)(iv)(A) through (G) and 29 CFR 791 determined that a joint employment relationship **does** exist between Optum360 and Dignity Health.

The following joint employment factors were met: **A through C and E.**

- A. Factor Met – The power to either alone or through control of the employer to direct, control or supervise the workers.** Dignity Health recruits potential employees, and Optum360 management conducts the interviews and hiring. Dignity Health completes the necessary employment paperwork for all employees. At the subject location, Optum360 employees make up the management team (analysts, supervisors, managers, and the director) that oversees all Dignity Health employees. As such, Dignity Health employees report directly to and are directly controlled by the Optum360 team. **(See Exhibit C-1)**
- B. Factor Met– The power either alone or in addition to another employer, directly or indirectly, to hire or fire, modify the employment conditions, or determine the pay rates or the methods of wage payment for workers.** Optum360 has the power to supervise, manage, and schedule Dignity Health employees at the subject location. Dignity Health and Optum360 both play a role in hiring and firing

employees. Dignity Health employees at the subject location report to Optum360 supervisors only. *(See Exhibit C-1)*

- C. **Factor Met** – **The degree of permanency and duration of the relationship of the parties.** Optum360 and Dignity Health have worked together since approximately October 2013. Per Optum360's attorney, Dignity Health was Optum360's first and main client. *(See Exhibit C-1)*
- D. **Factor Not Met** – **The extent to which the services rendered by the workers are repetitive, rote tasks requiring skills which are acquired with relatively little training.** Optum360 employees are considered to be part of the “management team” at the subject location. *(See Exhibit C-1)*
- E. **Factor Met** – **Whether the activities performed by the workers are an integral part of the overall business operation of the employer.** Optum360 provides revenue cycle management for Dignity Health. Optum360 managers oversee Dignity Health employees who work on billing and collections for several facilities under Dignity Health. Optum360's work is integral to the overall business operations of Dignity Health. *(See Exhibit C-1)*
- F. **Factor Not Met** – **Whether the work is performed on Optum360's premises, rather than on premises owned or controlled by another business entity.** Optum360's employees work on a site owned and operated by Dignity Health. *(See Exhibit C-1)*
- G. **Factor Not Met** – **Whether Optum360 undertakes responsibilities in relation to the workers which are commonly performed by employers.** Dignity Health administers all leave policies for its own employees through third-party Matrix. Dignity Health provides any required materials and pays all Dignity Health employees. *(See Exhibit C-1)*

EXEMPTIONS:

None claimed. (b) (6), (b) (7)(C) is an hourly, non-exempt employee and is subject to Section 207 of the Act. *(See Exhibits B-1, C-1, and D-4)* (b) (6), (b) (7)(C) is therefore entitled to protection under the nursing mother provisions of Section 207(r).

STATUS OF COMPLIANCE:

(b) (6), (b) (7)(C) (b) (7)(E) (b) (6), (b) (7)(C) is a nursing mother who needs to express milk for (b) (6), (b) (7)(C) child. It is less than 1 year after the child's birth. (See Exhibit B-1)

Section 207(r)(1)(A) & (B) – Reasonable Break Time & Place, Other than a Bathroom, Shielded from View and Free from Intrusion: No violation found.

(b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) employer told (b) (6), (b) (7)(C) to express milk during (b) (6), (b) (7)(C) breaks and lunch periods. (b) (6), (b) (7)(C) and the employer, (b) (6), (b) (7)(C) did not ask whether (b) (6), (b) (7)(C) could express milk at other times of the day. (See Exhibit B-1, C-1, and D-2)

An email exchange dated 02/01/2016 between (b) (6), (b) (7)(C) and HR Consultant (b) (6), (b) (7)(C) was provided by Dignity Health Attorney Ms. April Madison-Ramsey. In the email exchange, (b) (6), (b) (7)(C) asks, “[...] what would happen if I need to pump outside of my break time?” (b) (6), (b) (7)(C) replies, “Notify your supervisor of the need. You should be allowed to take that time and again, if your [sic] have accruals you'll need to code to them [sic] or take without pay.” (See Exhibit D-5)

Additionally, WHI confirmed that (b) (6), (b) (7)(C) was provided a place, other than a bathroom, that was shielded from view and free from intrusion to express milk. (See Case Diary and Exhibits B-1 and C-1)

Section 215(a)(3) – Retaliation Under the FLSA: No violation found.

(b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) was told to use paid time off when (b) (6), (b) (7)(C) expressed milk outside of (b) (6), (b) (7)(C) breaks and lunches. Per (b) (6), (b) (7)(C) and the employer, there is an unwritten, but enforced, policy that applies to any situation in which employees do not work all scheduled hours. (See Exhibits B-1 and D-5 through D-6)

A review of the events that occurred is as follows:

(b) (6), (b) (7)(C) returned to work. Per (b) (6), (b) (7)(C) supervisor told (b) (6), (b) (7)(C) that once (b) (6), (b) (7)(C) started accruing paid time off (PTO), (b) (6), (b) (7)(C) would have to use it for any time used in excess of (b) (6), (b) (7)(C) breaks and lunches to express milk. (b) (6), (b) (7)(C) contacted Human Resources and asked if there was a policy saying that (b) (6), (b) (7)(C) had to use PTO to express milk. As of 01/28/2016 (the date (b) (6), (b) (7)(C) contacted the Wage and Hour Division), (b) (6), (b) (7)(C) had not received a response. (See Exhibit B-1)

On 02/02/2016, Dignity Health Attorney Ms. April Madison-Ramsey sent WHI an email and referenced the attached “Personal/Discretionary Leave of Absence” policy in response to why (b) (6), (b) (7)(C) was told to use leave for any time that exceeded (b) (6), (b) (7)(C) breaks and lunch. A review of this specified policy indicated that it did not apply to (b) (6), (b) (7)(C) situation. (See Exhibits D-2 through D-3)

On 02/04/2016, WHI met with Optum360 Director Ms. Ruby Mulgado, Optum360 General Counsel Mr. Leni Hermanson, and Dignity Health's Human Resources Manager Ms. Maggie Vega at the business office in Modesto, CA. WHI asked about the policy to use leave to cover any time taken outside of breaks and lunch, Ms. Vega stated: *(See Exhibit C-1)*

“Any time an employee is off work, we ask that they use whatever leave available. The personal leave policy indicates this. Off the top of my head, I don't know if any other policy indicates this. [...] Going forward, we will talk to April to see what verbiage should be allowed and make sure the policy is sent out to everyone. This is the first time the policy has ever been questioned or brought up. I think it's been a long-standing practice to use vacation accrual for any time off across the board.”

On 02/17/2016, Dignity Health Attorney Ms. April Madison-Ramsey sent WHI an email stating the following: *(See Exhibit D-5)*

“St. Joseph's practice has always been to require any employee who requires a leave of absence (any time off work) to first use his/her accrued PTO before being permitted to take the time off unpaid. This practice has applied to all types of leave, foreseeable or not. [...] While the leave policy does not specifically anticipate instances where an employee departs early from a shift or returns late from a meal or rest period, such situations are contemplated in other policies [...] Read as a whole and consistent with Respondent's practice, employees are required to use all accrued PTO before taking unpaid leave.”

Ms. Madison-Ramsey provided the “HR Tardiness Policy” and the “HR Attendance Policy”. Neither document specifically discussed the requirement of using PTO if an employee works less than their scheduled hours. *(See Exhibit D-6)*

On 02/16/2016, WHI spoke with (b) (6), (b) (7)(C) about this policy of mandating the use of PTO if an employee works less than their scheduled hours. (b) (6), (b) (7)(C) confirmed that this policy had been enforced in (b) (6) department for at least 2 years. *(See Exhibit B-1)*

DISPOSITION:

On 02/17/2016, a final conference was held via teleconference with Dignity Health Attorney Ms. April Madison-Ramsey. Final conference notes were taken. *(See Exhibit D-9)*

WHI discussed the employer's responsibilities under the FLSA Nursing Mother provisions and the findings of the investigation as it related to (b) (6), (b) (7)(C).

Regarding the practice of mandating that all scheduled hours are covered by work or a form of leave, Ms. Madison-Ramsey stated:

“As far as I'm concerned, this practice is enforced throughout St. Joseph's. I make sure it's in practice.”

Regarding ensuring that all Dignity Health hospitals are aware of the nursing mothers provisions under the Act, Ms. Madison-Ramsey stated:

“Absolutely. Each facility has its own policies, but we let them know the state of the law. I am a central resource for any questions, and they all should be following the law.”

Ms. Madison-Ramsey stated that Dignity Health as a whole is aware of the nursing mother provisions under the FLSA and will continue to comply.

On 03/02/2016, Ms. Madison-Ramsey returned a signed Enhanced Compliance Agreement via email. (*See Exhibit D-10*)

(b) (6), (b) (7)(C) Notification:

(b) (6), (b) (7)(C) was notified of the results of the investigation on 02/29/2016 via telephone.

Publications:

The following publications were mailed to Ms. Maggie Vega on 03/03/2016: FLSA (WH 1318). Fact Sheets #13, 14, 17A, 21, 22, 23, 28, 28D, 43, 44, 73. Frequently Asked Questions – Break Time for Nursing Mothers (printed from www.dol.gov/whd).

HRG and Fact Sheets #28D, 44, and 77A were provided to Human Resources Manager Ms. Maggie Vega via email on 01/29/2016. HRG and Fact Sheets #28D, 44, 73, and 77A were provided on 02/04/2016 to Ms. Vega and Optum360 Director Ms. Ruby Mulgado at the establishment.

Recommendation:

It is recommended that the case be closed with no further action.

(b) (6), (b) (7)(C)

Wage & Hour Investigator

03/03/2016

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1784198 Originating District: Honolulu District Office
Local Filing Number: 2016-198-01647 Investigating District: Honolulu District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 02/16/2016
Assignment Date: 02/16/2016

Employer Information

Trade Name: Lotte Duty Free Legal Name: Lotte Duty Free Guam, LLC
Address: PO Box 24893 EIN: 66-0792436
Antonio B. Wom Pat Airport County: Guam
Barrigada, GU96921 NAICS Code: 45399
No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 02/17/2014 BNPI:
To: 02/16/2016 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Compliance (no violations found) Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FMLA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FMLA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

(b) (7)(E) case. (b) (7)(E) . Lim Inv- Lotte Duty Free is owned and operated by Lotte Duty Free Guam, LLC. Honolulu DO is MODO.Covg-3s1Aii>500K. Inv Pd - 2/17/14-2/16/16. Exmpts-not tested. App Compl w/secs 6,7,11,12 and FLSNM. Frim agreed to future compliance w/FLSA and FLSNM. Rec case be closed (b) (7)(E) . Pubs-see narrative.

WHI Signature: _____ Date: 04/20/2016

Reviewed By: _____ Date: _____

Lotte Duty Free, LKC

DBA: Lotte Duty Free
PO Box 24893
Barrigada, Guam 96921
Phone: (671) 642-0228
Fax: (671) 648-0213

EIN: 66-0792436

Case #: 1784198

FLSA NARRATIVE

COVERAGE

Reason for Investigation: This is a (b) (7)(E) case and (b) (7)(E)

Prior History: This is the first investigation conducted on the firm.

MODO: The main office of the subject firm, Lotte Duty Free Guam, is located within the jurisdiction of the Honolulu District Office. Lotte Duty Free Guam has only one establishment and is therefore not part of a larger enterprise. Therefore, the MODO protocols are not applicable

Nature of Business: The firm was established as a corporation on September 27, 2012 on Guam (Exs. C-1, C-2, C-3)

Lotte Duty Free Guam is licensed by the Government of Guam and is engaged in the business of a selling tobacco, cosmetics and toiletries. Lotte Duty Free Guam is located at the Guam International Airport located in Tamuning, Guam (Exs. C-1, C-5).

Section 3(d) Employer: Jun Lee is the firm's CFO/COO (Exs. C-1, C-4).

(b) (6), (b) (7)(C) hires and fires employees and handles the daily management and operation of the business. (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) also directs the work of all employees of the firm (Exs.B-1, B-2, C-1).

Therefore, (b) (6), (b) (7)(C) is identified as the firm's Section 3(d) employer.

Section 3(s)(1)(A)(ii): The firm's annual dollar volume for the past three years are as follows:

- 2013 - (b) (4) (Exs. C-1, C-6)
- 2014 - (b) (4) (Exs. C-1, C-7)
- 2015 - (b) (4) (Exs. C-1, C-8)

The firm currently employs (b) (4) employees in occupations such as Sales Associates, Beauty Advisors and Cashroom Attendants (Exs. C-1, C-9)

These employees handle goods that have moved through commerce, such as Marlboro Cigarettes which are produced in the United States as well as Jack Daniels which is a product of United States (Ex. C-1).

Therefore, the firm is covered under Section 203(s)(1)(A)(ii) of the FLSA since its ADV exceeds \$500,000.00 and at least 2 employees handle goods that have traveled through interstate commerce.

Period of Investigation: February 17, 2014 – February 16, 2016.

EXEMPTIONS

Section 213(a)(1): This is a limited investigation. No section 213(a)(1) exemptions were tested (Ex.C-1).

STATUS OF COMPLIANCE

Investigative Results of the (b) (6), (b) (7)(C), (b) (7)(E) (b) (7)(E) This is a (b) (7)(E) case.

Profile Pay Period: February 1, 2016 to February 15, 2016 (Ex. A-1).

Section206 (MW): Initial conference and payroll record review revealed that the firm pays its employees in compliance with this section (Ex. A-1)

Section 207 (OT): Apparent Compliance. Initial conference and payroll record review revealed that the firm computes and pays overtime in compliance with this section (Exs. A-1, D-1).

Section 211 (RK): Apparent Compliance. The employer maintained all necessary payroll and time records. (Exs. A-1, D-1).

Section 212 (CL): Apparent Compliance. Initial conference, tour of establishment and payroll record review revealed the firm employed no minors during the investigative period. (Exs. B-1, B-2, C-1).

FMLA: The firm has an up to date FMLA policy and has an FMLA poster posted where it can be seen by all employees. No Policy review was done as this is a limited investigation. (Exs. C-1, D-2).

FLSNM Section 207(r): The firm had no nursing mothers during the investigative period. The firm has a storage room located off the employee break room that they would utilize if they would have a nursing mother in the future. The storage room has no windows, a lockable door and ample room for a nursing mother to sit and express (b) (6), (b) (7)(C) milk. The firm also has three full size refrigerators in the employee break room that could be utilized to store expressed milk. The firm stated that the nursing mother would be able to take a reasonable amount of breaks throughout the day to express milk. The firm stated that twenty minutes or less would be paid time. Any time over twenty minutes would be unpaid time. The firm said it would post a sign on the door of the storage room when a nursing mother was expressing milk. This would avoid any intrusions by other employees. The firm stated that should a nursing mother situation present itself in the future it would comply with all the rules and regulations. The firm also agreed to post Fact Sheet #73 where it could be seen by all employees of the firm (See exhibit C-1 and Compliance Action Plan).

Note: The firm submitted a compliance action plan stating its plans for future compliance with Section 207(r) of the FLSA.

Regarding Section 16(e): The firm was advised that due to the compliance assistance provided on the current case, any future violations of section 206 & 207 of the FLSA could result in CMP's being levied against the firm.

DISPOSITION

A final conference was held with the firm on February 19, 2016 at the establishment.

Present were: MJ Fuller (Human Resources Manager) and WHI (b) (6), (b) (7)(C).

The investigative process and findings were discussed with the firm. Sections 206, 207, 211, 212 and 207(r) of the FLSA were also discussed. FLSNM was also discussed in detail with the firm.

No Fair Labor Standards Act violations were found at this time, the firm did not take exception to compliance assistance provided by WHI (b) (6), (b) (7)(C).

Regarding Section 206: The firm was advised of the current federal minimum wage of \$6.05.

Regarding Section 207: The firm was advised that it must pay time and ½ the employee's regular rate for hours worked over 40 in a work week.

Regarding Section 211: The firm was advised of the record keeping requirements of the Act.

Regarding Section 212: The Child Labor requirements of the Act were discussed with the firm.

Regarding Section 216(e): Ms. Fuller was advised that the firm is expected to be aware of and comply with the Minimum Wage, Overtime, Record Keeping, Child Labor and other FLSA regulations and requirements discussed.

The firm was also advised that should violations of the FLSA be discovered in the future, those can be deemed as willful violations.

Regarding FLSNM Section 207(r): The firm has a storage room located off the employee break room that they would utilize if they would have a nursing mother in the future. The storage room has no windows, a lockable door and ample room for a nursing mother to sit and express (b) (6), (b) (7)(C) milk. The firm also has three full size refrigerators in the employee break room that could be utilized to store expressed milk.

The firm stated that the nursing mother would be able to take reasonable amount of breaks throughout the day to express milk. The firm stated that twenty minutes or less would be paid time. Any time over twenty minutes would be unpaid time. The firm said it would post a sign on the door of the storage room when a nursing mother was expressing milk. This would avoid any intrusions by other employees. The firm stated that should a nursing mother situation present itself in the future it would comply with all the rules and regulations. The firm also agreed to post Fact Sheet #73 where it could be seen by all employees of the firm

Firm's Response: Ms. Fuller said that the compliance information was appreciated and the will maintain compliance with the FLSA.

Recommendation: (b) (7)(E) It is recommended that case be administratively closed with no further action.

(b) (6), (b) (7)(C) **Notification:** This is a (b) (7)(E) case.

Publications Provided: FLSA HRG; Regulations 541, 578, 778; Fact Sheets 16, 28D, 44, 73; DOL Website.

Prepared and Submitted By:

(b) (6), (b) (7)(C)
Investigator (Guam AO)
February 21, 2016

WHISARD Compliance Action Report

U.S. Department of Labor Wage and Hour Division

Case ID: 1788665 Originating District: Honolulu District Office
Local Filing Number: 2016-198-01680 Investigating District: Honolulu District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 04/05/2016
Assignment Date: 04/05/2016

Employer Information

Trade Name: Tentekomai Legal Name: Will be entered later
Address: 818 N. Marine Dr. EIN: 66-0558852
County: Guam
NAICS Code: 722211
Piti, GU96915 No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 04/06/2014 BNPI:
To: 04/05/2016 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Compliance (no violations found) Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FMLA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FMLA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

(b) (7)(E) case. (b) (7)(E) Lim Inv- Tentekomai is owned and operated by KGD, LLC on Guam. Honolulu DO is MODO.Covg-3s1Aii>500K. Inv Pd - 4/6/14-4/5/16. Exmpts-not tested. App Compl w/secs 6,7,11,12 and FLSNM. Frim agreed to future compliance w/FLSA and FLSNM. Rec case be closed (b) (7)(E). Pubs-see narrative.

WHI Signature: _____ Date: 05/17/2016

Reviewed By: _____ Date: _____

KGD, LLC

DBA: Tentekopmai
818 N. Marine Dr.
Piti, Guam 96915
Phone: (671) 475-7777
Fax: (671) 4727001

EIN: 66-0558852

Case #: 1788665

FLSA NARRATIVE

COVERAGE

Reason for Investigation: This is a (b) (7)(E) case and (b) (7)(E)

Prior History: This is the first investigation conducted on the firm.

MODO: The main office of the subject firm, Tentekomai, is located within the jurisdiction of the Honolulu District Office. Tentekomai has only one establishment and is therefore not part of a larger enterprise. Therefore, the MODO protocols are not applicable

Nature of Business: The firm was established as a Limited Liability Corporation on April 13, 1998 on Guam (Exs. C-1, C-2, C-3)

Tentekomai is licensed by the Government of Guam and is engaged in the business of restaurant specializing in Japanese Cuisine.. Tentekomai is located at the Guam International Airport located in Tamuning, Guam (Exs. C-1, C-3).

Section 3(d) Employer: Akihiro Tani is the firm's General Manager (Exs. C-1, C-2).

Mr. Tani hires and fires employees and handles the daily management and operation of the business. Mr.

Tani also directs the work of all employees of the firm (Ex. C-1).

Therefore, Akihiro Tani is identified as the firm's Section 3(d) employer.

Section 3(s)(1)(A)(ii): The firm's annual dollar volume for the past three years is as follows:

- 2013 - (b) (4) (Exs. C-1, C-4)
- 2014 - (b) (4) (Exs. C-1, C-5)
- 2015 - (b) (4) (Exs. C-1, C-6)

The firm currently employs (b) (4) employees in occupations such as Cashiers and Cooks (Exs. C-1, C-7)

These employees handle goods that have moved through commerce, such as Kikkoman Soy Sauce which is produced in the United States as well as Mcilhenry Hot Sauce which is a product of United States (Ex. C-1).

Therefore, the firm is covered under Section 203(s)(1)(A)(ii) of the FLSA since its ADV exceeds \$500,000.00 and at least 2 employees handle goods that have traveled through interstate commerce.

Period of Investigation: April 6, 2014 – April 5, 2016.

EXEMPTIONS

Section 213(a)(1): This is a limited investigation. No section 213(a)(1) exemptions were tested.

STATUS OF COMPLIANCE

Investigative Results of the (b) (6), (b) (7)(C), (b) (7)(E) (b) (7)(E) This is a (b) (7)(E) case.

Profile Pay Period: March 20, 2016 to April 2, 2016 (Ex. A-1).

Section 206 (MW): Initial conference, payroll record review and employee interviews revealed that the

firm pays its employees in compliance with this section (Exs. A-1, B-1, B-2)

Section 207 (OT): Apparent Compliance. Initial conference, payroll record review and employee interviews revealed that the firm computes and pays overtime in compliance with this section (Exs. A-1, B-1).

Section 211 (RK): Apparent Compliance. The employer maintained all necessary payroll and time records. (Ex. A-1).

Section 212 (CL): Apparent Compliance. Initial conference, tour of establishment and employee interviews revealed the firm employed no minors during the investigative period. (Exs. B-1, B-2, C-1).

FMLA: The firm has an up to date FMLA policy and posted the required poster where it was visible to all employees. No policy review was conducted as this was a limited investigation (Exs. C-1, D-1).

FLSNM Section 207(r): The firm had no nursing mothers during the investigative period. The firm had no room that it could utilize for a nursing mother. The restaurant has no area sufficient to meet the requirements of the act. The firm stated it would utilize the nursery recently constructed by GIAA on the ground floor of the terminal. The nursery has been inspected by this wage hour investigator and meets all the requirements of the act. The firm has refrigerators available for nursing mothers to store the expressed milk. The firm stated that the nursing mother would be able to take reasonable amount of breaks throughout the day to express milk. The firm stated that it already provides paid breaks to its employees and if a nursing mother utilized those breaks that time would be compensated work hours. twenty minutes or less would be paid time. The firm stated that should a nursing mother situation present itself in the future it would comply with all the rules and regulations. The firm also agreed to post Fact Sheet #73 where it could be seen by all employees of the firm (See exhibit C-1 and firms Compliance Action Plan).

Regarding Section 16(e): The firm was advised that due to the compliance assistance provided on the current case, any future violations of section 206 & 207 of the FLSA could result in CMP's being levied against the firm.

DISPOSITION

A final conference was held with the firm on May 17, 2016 at the establishment.

Present were: Jayme Bucek (Human Resources Manager) and WHI (b) (6), (b) (7)(C).

The investigative process and findings were discussed with the firm. Sections 206, 207, 211, 212 and 207(r) of the FLSA were also discussed. FLSNM was also discussed in detail with the firm.

No Fair Labor Standards Act violations were found at this time, the firm did not take exception to compliance assistance provided by WHI (b) (6), (b) (7)(C).

Regarding Section 206: The firm was advised of the current federal minimum wage of \$7.25.

Regarding Section 207: The firm was advised that it must pay time and ½ the employee's regular rate for hours worked over 40 in a work week.

Regarding Section 211: The firm was advised of the record keeping requirements of the Act.

Regarding Section 212: The Child Labor requirements of the Act were discussed with the firm.

Regarding Section 216(e): Minimum Wage, Overtime, Record Keeping, Child Labor and other FLSA regulations and requirements were discussed.

The firm was also advised that should violations of the FLSA be discovered in the future, those can be deemed as willful violations.

Regarding FLSNM Section 207(r): The firm had no nursing mothers during the investigative period. The firm had no room that it could utilize for a nursing mother. The restaurant has no area sufficient to meet the requirements of the act. The firm stated it would utilize the nursery recently constructed by GIAA on the ground floor of the terminal. The nursery has been inspected by this wage hour investigator and meets all the requirements of the act. The firm has refrigerators available for nursing mothers to store the expressed milk. The firm stated that the nursing mother would be able to take reasonable amount of

breaks throughout the day to express milk. The firm stated that it already provides paid breaks to its employees and if a nursing mother utilized those breaks that time would be compensated work hours. twenty minutes or less would be paid time. The firm stated that should a nursing mother situation present itself in the future it would comply with all the rules and regulations. The firm also agreed to post Fact Sheet #73 where it could be seen by all employees of the firm.

Firm's Response: Ms. Bucek said that the compliance information was helpful and would be utilized in the future. She stated the firm will maintain compliance with the FLSA.

Recommendation: (b) (7)(E) It is recommended that case be administratively closed with no further action.

(b) (6), (b) (7)(C) **Notification:** This is a (b) (7)(E) case.

Publications Provided: FLSA HRG; Regulations 516, 541, 578, 785, 778; Fact Sheets 14, 16, 17A, 21, 22, 23, 28D, 44, 73; DOL Website.

Prepared and Submitted By:

(b) (6), (b) (7)(C)
Investigator (Guam AO)
May 18, 2016

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1805079 Originating District: Honolulu District Office
Local Filing Number: 2017-198-01838 Investigating District: Honolulu District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 10/25/2016
Assignment Date: 10/25/2016

Employer Information

Trade Name: Dept. of Administration / Gov't of Guam Legal Name: Dept. of Administration / Gov't of Guam
Address: 590 South Marine Corps Dr., ITC Building EIN: EIN Missing
PO Box 884, Hagatna GU 96932 County: Guam
Hagatna, GU96910 NAICS Code: 09390
No. Of Employees: 1355

Investigation Information

Period Investigated From: 11/30/2014 BNPI:
To: 11/29/2016 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Compliance (no violations found) Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
No Violation found for this act / Compliance (no violations found)					\$0.00	\$0.00	

WHISARD Compliance Action Report

FLSA

Violation / Compliance Status	Violations	EEs	ATPBWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
No Violation found for this act / Compliance (no violations found)					\$0.00	\$0.00	
FLSA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs	ATPBWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
No Violation Found for this Act / Compliance (no violations found)					\$0.00	\$0.00	
FLSNM Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

This was a (b) (7)(E) case under the (b) (7)(E) . Firm is covered as a govt agency. About 135 EEs. Limited inv with focus on firm's compliance of FLSN. Firm in compliance with MW, OT, RK, CL and FLSN requirements. Extensive compliance asst provided. Recommend case be closed with no further action.

WHI Signature: _____ Date: 01/23/2017

Reviewed By: _____ Date: _____

Department of Administration Case #: 1805079
Government of Guam
International Trade Center Building (ITC)
590 S. Marine Corps Drive
Tamuning, Guam 96932
Phone: (671) 475-1101/1250
Fax: (671) 477-6788

FLSA NARRATIVE

COVERAGE

Reason for Investigation: This is a (b) (7)(E) case and (b) (7)(E)
[REDACTED]

Prior History: This is the first investigation conducted on the firm.

MODO: The main office of the subject firm, Guam Department of Administration (DOA), is located within the jurisdiction of the Honolulu District Office. Guam DOA has only one establishment and is therefore not part of a larger enterprise. Therefore, the MODO protocols are not applicable.

Nature of firm: The Guam Department of Administration was established by law as an executive branch agency of the Government of Guam. The agency is in charge of establishing the local government's personnel policies, administering its finances, and oversees procurement regulations, among other executive roles. (Ex. C-2). The divisions under DOA include the Division of Finance, Division of Human Resources, Office of the Territorial Officer, Treasurer of Guam, and Office of Technology.

Section 3(d) Employer: Christine W.P. Baleto is the director of the Department. She is in

charge of overseeing the Department, including the coordination of its daily operations, management of its managers and staff, and the enforcement of its policies and regulations. The director reports directly to the governor of Guam. (Exs. C-1, D-2)
Therefore, Ms. Baleto is identified as the Department's Section 3(d) employer.

Section 3(s)(1)(C): The Guam Department of Administration was established as an executive branch agency of the Government of Guam. (Ex.C-1, C-2)
DOA currently employs about 135 employees in various occupations, including managers, accountants and accounting technicians, personnel specialists, payroll technicians, computer system analysts, and procurement officers. (Exs. A-1, C-1,D-3)

The Guam Department of Administration is part of the Government of Guam, and, is therefore, a named and covered enterprise under this Section of the Act.

Period of Investigation: November 30, 2014 – November 29, 2016.

EXEMPTIONS

Section 213(a)(1): This is a limited investigation. No section 213(a)(1) exemptions were tested (Ex. C-1). The focus of this investigation is compliance with the Break Time for Nursing Mothers Provision under Sec. 7(r).

STATUS OF COMPLIANCE

Investigative Results of the (b) (6), (b) (7)(C), (b) (7)(E) (b) (7)(E) This is a (b) (7)(E) case.

Profile Pay Period: November 13, 2016 to November 26, 2016 (Ex. A-1).

Section 206 (MW): Apparent Compliance. Initial conference and payroll record review revealed that DOA pays its employees in compliance with this Section. All employees are paid above the federal minimum wage rate. (Ex. A-1, D-3)

Section 207 (OT): Apparent Compliance. Initial conference and payroll record review revealed that DOA computes and pays overtime in compliance with this Section (Ex. A-1, D-3).

Section 211 (RK): Apparent Compliance. DOA maintained all necessary payroll and time records as required under this Section. (Ex. A-1, D-3).

Section 212 (CL): Apparent Compliance. Initial conference, tour of establishment and payroll record review revealed that DOA employed no minors during the investigative period. (Ex. C-1).

FMLA: The firm has an up-to-date FMLA policy and has an FMLA poster where it can be seen by all employees. No policy review was conducted as this is a limited investigation. (Ex. C-1).

FLSNM Section 207(r): The investigation determined the firm was in compliance with this Section.

The firm has a government-wide policy in line with Guam Public Law 32-098, also known as Nana yan Patgon Act (Mother and Child Act). The language of this local law and DOA policy is in line with much of the language under Section 7(r) of the FLSA. (Ex. D-4)

The firm had one nursing mother during the investigative period. The nursing mother was an employee of the DOA Accounts Division. (Ex. B-1, C-1)

The firm's management provided a room to allow the nursing mother to express milk in private. This room was a cubicle located on the same floor of the employee's work site. This room could be locked from the inside and had no windows. The room had a table and chairs and electrical outlet. (Ex. B-1, D-4)

The employee utilized a kitchen/employee lounge near this room to wash and clean (b) (6), (b) pump and bottles. A refrigerator was available for the employee to store (b) (6), (b) baby's milk.

The nursing mother stated that the room was free from intrusion. In addition to locking the room, the employee posted a "Do not disturb" sign to ensure privacy. (Ex. B-1)

The nursing mother had utilized the room for several months. (b) (6), (b) said (b) (6), (b) expressed milk two to three times a day for about 20 to 25 minutes each time, adding (b) (6), (b) wages were not deducted

for any time she needed to express. (Ex. B-1)

Financial manager (b) (6), (b) (7)(C), supervisor of the Accounts Division, stated this room is available for any other employee who may need to express. A tour of the establishment determined this room is centrally located for DOA employees. The tour also confirmed the room meets all of the requirements under Section 7(r) of the FLSA.

DOA agreed to post Fact Sheet #73 where it would be visible to all employees. The firm also agreed to hand out Break Time for Nursing Mother cards to its employees.

DISPOSITION

A final conference was held with the firm on January 18, 2017 at the establishment.

Present were: DOA Director Christine Baleto, DOA Human Resource Division Manager Shane Ngata, and WHI (b) (6), (b) (7)(C).

The investigative process and findings were discussed with the firm. Sections 206, 207, 211, 212 and 207(r) of the FLSA were also discussed. FLSNM was also discussed in detail with the firm.

No Fair Labor Standards Act violations were found at this time, the firm did not take exception to compliance assistance provided by WHI (b) (6), (b) (7)(C).

Regarding Section 206: The firm was advised of the current federal minimum wage of \$7.25.

Regarding Section 207: The firm was advised that it must pay time and ½ the employee's regular rate for hours worked over 40 in a work week.

Regarding Section 211: The firm was advised of the record keeping requirements of the Act.

Regarding Section 212: The Child Labor requirements of the Act were discussed with the firm.

Regarding Section 216(e): Managers were advised that the firm is expected to be aware of and comply with the Minimum Wage, Overtime, Record-Keeping, Child Labor and other FLSA regulations and requirements discussed. The firm was also advised that should violations of

the FLSA be discovered in the future, those can be deemed as willful violations.

Rgarding FLSNM Section 207(r): The firm was advised of the requirements of this Section, and extensive compliance assistance was provided. The firm was advised about the requirements of a clean, functional room that provided privacy for a nursing mother. The firm was advised of which employees were covered by this Section, and the prohibition on discriminating against employees who utilize this break time provision under the law. Also discussed was the reasonable break time and length of the provision's applicability after a child's birth.

Firm's Response: Director Baleto noted the firm, as an agency under the Government of Guam's executive branch, has shared responsibility in promulgating and enforcing GovGuam's personnel laws and policies. She noted the local government has a mandate under Public Law 32-098, also known as Nana yan Patgon Act (Mother and Child Act), that reflects the intent and requirements of Section 7(r) of the FLSA.

Dir. Baleto assured present and future compliance for the Dept. of Administration, and noted her office will work to ensure other GovGuam agencies adhere to the local and federal laws regarding the Break Time for Nursing Mothers Provision.

Recommendation: (b) (7)(E) It is recommended that case be administratively closed with no further action.

(b) (6), (b) (7)(C) **Notification:** This is a (b) (7)(E) case.

Publications Provided: FLSA HRG; Fact Sheets on State and Local Governments (7), FLSA investigations (44), Nursing Mothers Provision (73), FMLA (28D); Break Time for Nursing Mothers information Cards; DOL Website.

Prepared and Submitted By:

(b) (6), (b) (7)(C)
Wage Hour Investigator (Guam AO)
January 20, 2017

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1818361 Originating District: Honolulu District Office
Local Filing Number: 2017-198-01983 Investigating District: Honolulu District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 03/30/2017
Assignment Date: 06/13/2017

Employer Information

Trade Name: Guam Environmental Protection Agency Legal Name: Government of Guam
Address: PO box 22439 EIN: 98-0018947
County: Guam
NAICS Code: 09330
Barrigada, GU96921 No. Of Employees: 50

Investigation Information

Period Investigated From: 06/15/2015 BNPI:
To: 06/14/2017 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Compliance (no violations found) Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☒
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FMLA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FMLA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

(b) (7)(E) case. Part of the (b) (7)(E) . Lim Inv- Guam Environmental Protection Agency is a Gov of Guam Agency. Honolulu DO is MODO.Covg-3s1C-Public Agency. Inv Pd - 6/15/15-6/14/17. Exmpts-not tested. App Compl w/secs 6,7,11,12 and FLSNM. GEPA agreed to future compliance w/FLSA and FLSNM. Rec case be administratively closed. Pubs-see narrative.

WHI Signature: _____ Date: 07/25/2017

Reviewed By: _____ Date: _____

Government of Guam

EIN: 98-001974

DBA: Guam Environmental Protection Agency Case #: 1818361

17-3304 Mariner Ave.

Barrigada, GU 96913

Phone: (671) 300-4751

Fax: (671) 300-4531

FLSA NARRATIVE

COVERAGE

Prior History: This is the first investigation conducted on the firm.

MODO: The main office of the subject Agency, Guam Environmental Protection Agency is located within the jurisdiction of the Honolulu District Office. Guam Environmental Protection Agency is an agency of the Government of Guam and is therefore not part of a larger enterprise. Therefore, the MODO protocols are not applicable

Nature of Business: The Guam Environmental Protection Agency was established as agency within the Government of Guam (Ex. C-2).

Section 203(d) Employer: Walter Leon Guerrero is the Guam Environmental Protection Agency's Director (Exs. C-1, C-3).

He is responsible for the administration and management of the Guam Environmental Protection Agency . He is responsible for the daily operation of GEPA and the planning, coordination, and supervision of GEPA's employees and assets (Ex. C-1).

Therefore, Walter Leon Guerrero is identified as Guam Environmental Protection Agency's Section 3(d)

employer.

Section 203(s)(1)(C): The Guam Environmental Protection Agency was established as agency within the Government of Guam (Ex. C-2).

The Guam Environmental Protection Agency currently employs approximately 54 employees in various professional and administrative occupations (Exs. C-1, C-3).

The Guam Environmental Protection Agency is an agency within the Government of Guam, and is therefore a named and covered enterprise under this Section of the Act.

Period of Investigation: June 15, 2015 – June 14, 2017.

EXEMPTIONS

Section 213(a)(1): This is a limited investigation. No section 213(a)(1) exemptions were tested (Ex.C-1).

STATUS OF COMPLIANCE

Reason for Investigation: This is a (b) (7)(E) case and (b) (7)(E)

Investigative Results of the (b) (6), (b) (7)(C), (b) (7)(E) (b) (7)(E) . This is a (b) (7)(E) case.

Profile Pay Period: May 28, 2017 to June 10, 2017 (Ex. A-1).

Section 206 (MW): Initial conference and payroll record review and employee interviews revealed that GEPA pays its employees in compliance with this section (Ex. A-1)

Section 207 (OT): Apparent Compliance. Initial conference and payroll record review revealed that GEPA computes and pays overtime in compliance with this section (Ex. A-1).

Section 211 (RK): Apparent Compliance. GEPA maintained all necessary payroll and time records. (Ex.

A-1, C-1).

Section 212 (CL): Apparent Compliance. Initial conference, tour of establishment and payroll record review revealed that GEPA employed no minors during the investigative period. (Ex. C-1).

FMLA: Guam Environmental Protection Agency follows the Government of Guam's FMLA Policy. Guam Environmental Protection Agency had an FMLA poster posted where it can be seen by all employees. No Policy review was conducted as this is a limited investigation. (Ex. C-1).

FLSNM Section 207(r): The Guam Environmental Protection Agency had no nursing mothers during the investigative period. Guam Environmental Protection Agency was familiar with the local law regarding nursing mothers. Though they had not had any nursing mothers during the two year investigative period they had designated a room that would be used should they have a nursing mother in the future. Should Guam Environmental Protection Agency have a nursing mother in the future, the nursing mother would be given access to the room anytime during the day in order to express milk. The room designated could be locked from the inside, had electrical outlets and had no windows (Ex. D-1). The room had chairs that could be utilized by the nursing mothers (Ex. D-1). The room also had a refrigerator in which any future nursing mothers could store their milk. Guam Environmental Protection Agency stated that the nursing mothers would be given reasonable time to express milk on a daily basis. They stated that all time spent expressing milk would be paid time and not deducted from the employees hours worked.

The Guam Environmental Protection Agency was provided with FLSNM information cards that could be distributed to its employees. Guam Environmental Protection Agency also agreed to post fact sheet #73 on its information board and in its staff break room.

Guam Environmental Protection Agency stated it will make every effort to accommodate nursing mothers. They agreed to make sure they are in compliance with requirements of the FLSNM.

Regarding Section 16(e): Guam Environmental Protection Agency was advised that due to the compliance assistance provided on the current case. Any future violations of section 206 or 207 of the act in could result in penalties being levied against the agency.

DISPOSITION

A final conference was held with the firm on June 29, 2017 at the establishment.

Present were: Connie Affleje (ASO); and WHI (b) (6), (b) (7)(C).

The investigative process and findings were discussed with the firm. Sections 206, 207, 211, 212 and 207(r) of the FLSA were also discussed. FLSNM was also discussed in detail with the firm.

No Fair Labor Standards Act violations were found at this time, the firm did not take exception to compliance assistance provided by WHI (b) (6), (b) (7)(C).

Regarding Section 206: The firm was advised of the current federal minimum wage of \$7.25.

Regarding Section 207: The firm was advised that it must pay time and ½ the employee's regular rate for hours worked over 40 in a work week.

Regarding Section 211: The firm was advised of the record keeping requirements of the Act.

Regarding Section 212: The Child Labor requirements of the Act were discussed with the firm.

Regarding Section 216(e): Ms. Affleje was advised that the firm is expected to be aware of and comply with the Minimum Wage, Overtime, Record Keeping, Child Labor and other FLSA regulations and requirements discussed.

The firm was also advised that should violations of the FLSA be discovered in the future, those can be deemed as willful violations.

Regarding FLSNM Section 207(r): As stated in the compliance section The Guam Environmental Protection Agency had no nursing mothers during the investigative period. Guam Environmental Protection Agency was familiar with the local law regarding nursing mothers. Though they had not had

any nursing mothers during the two year investigative period they had designated a room that would be used should they have a nursing mother in the future. Should Guam Environmental Protection Agency have a nursing mother in the future, the nursing mother would be given access to the room anytime during the day in order to express milk. The room designated could be locked from the inside, had electrical outlets and had no windows. The room had chairs that could be utilized by the nursing mothers. The room also had a refrigerator in which any future nursing mothers could store their milk. Guam Environmental Protection Agency stated that the nursing mothers would be given reasonable time to express milk on a daily basis. They stated that all time spent expressing milk would be paid time and not deducted from the employees hours worked.

The Guam Environmental Protection Agency were provided with FLSNM information cards that could be distributed to its employees. Guam Environmental Protection Agency also agreed to post fact sheet #73 on its information board and in its staff break room.

Firm's Response: Ms. Affleje stated the compliance information was greatly appreciated and The Guam Environmental Protection Agency will maintain compliance with the FLSA and all regulations in the future.

Recommendation: (b) (7)(E) It is recommended that case be administratively closed with no further action.

(b) (6), (b) (7)(C) **Notification:** This is a (b) (7)(E) case.

Publications Provided: FLSA HRG; Fact Sheets 7, 28D, 44, 73; Break Time for Nursing Mothers information Cards; DOL Website.

Prepared and Submitted By:

(b) (6), (b) (7)(C)
Investigator (Guam AO)
July 26, 2017

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1818362 Originating District: Honolulu District Office
Local Filing Number: 2017-198-01984 Investigating District: Honolulu District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 03/30/2017
Assignment Date: 06/13/2017

Employer Information

Trade Name: Guam Department of Education (GDOE) Legal Name: Government of Guam
Address: 500 Mariner ave EIN: 98-0018974
County: Guam
NAICS Code: 09210
Barrigada, GU96913 No. Of Employees: 4000

Investigation Information

Period Investigated From: 06/19/2015 BNPI:
To: 06/18/2017 Reinvestigation: ☒
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Full Investigation Future Compliance Agreed: ☒
Compliance Status: Compliance (no violations found) Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FMLA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FMLA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

(b) (7)(E) case. Part of the (b) (7)(E) . Lim Inv- GDOE is a Gov of Guam Agency. Honolulu DO is MODO.Covg-3s1C-Public Agency. Inv Pd - 6/19/15-6/18/17. Exmpts-not tested. App Compl w/secs 6,7,11,12 and FLSNM. Frim agreed to future compliance w/FLSA and FLSNM. Rec case be administratively closed. Pubs-see narrative

WHI Signature: _____ Date: 07/16/2017

Reviewed By: _____ Date: _____

Government of Guam

DBA: Guam Department of Education
500 Mariner Ave.
Barrigada, Guam 96913
Phone: (671) 646-0300
Email: amunsantos@gdoe.com

EIN: 98-001974

Case #: 1781074

FLSA NARRATIVE

COVERAGE

Prior History: This is the second investigation conducted on the firm.

Case# 1673268: Coverage-3s1B & 3s1C - schools and public agency. Limited investigation for school aides at GWHS. Investigative period-8/1/12-12/31/12. Violations - Section 7 - GDOE failed to pay proper OT for school aides at GWHS for hours worked over 40 in a week. BWS=\$8494.72 for 10 employees. GDOE ATC & ATP by 5/18/13. Recommend case be closed upon full payment of back wages and any CMPs assessed are satisfied (Ex. D-8).

MODO: The main office of the subject firm, Guam Department of Education, is located within the jurisdiction of the Honolulu District Office. Guam Department of Education is an agency of the Government of Guam and is therefore not part of a larger enterprise. Therefore, the MODO protocols are not applicable

Nature of Business: The Guam Department of Education was established as agency within the Government of Guam (Ex. C-2).

Section 203(d) Employer: Jon Fernandez is the Guam Department of Educations Superintendent (Exs. C-1, C-4).

He is responsible for the administration and management of the Guam Department of Education. He is responsible for the daily operation of DOE and the planning, coordination, and supervision of DOE's employees and assets (Exs. C-1, C-2).

Therefore, Jon Fernanadez is identified as GDOE's Section 3(d) employer.

Section 203(s)(1)(C): The Guam Department of Education was established as agency within the Government of Guam (Ex. C-2).

GDOE currently employs approximately (b) (4) employees in various professional and administrative occupations (Exs. C-1, C-4, See A exhibit flash drive for list of all employees).

The Guam Department of Education is an agency within the Government of Guam, and is therefore a named and covered enterprise under this Section of the Act.

Period of Investigation: June 19, 2015 – June 18, 2017.

EXEMPTIONS

Section 213(a)(1): This is a limited investigation. No section 213(a)(1) exemptions were tested (Ex.C-1).

STATUS OF COMPLIANCE

Reason for Investigation: This is a (b) (7)(E) case and (b) (7)(E)

Investigative Results of the (b) (6), (b) (7)(C), (b) (7)(E) (b) (7)(E) . This is a (b) (7)(E) case.

Profile Pay Period: June 4, 2017 to June 17, 2017 (Ex. A-1).

Section 206 (MW): Initial conference and payroll record review and employee interviews revealed that

GDOE pays its employees in compliance with this section (Ex. A-1, B-1, B-2)

Section 207 (OT): Apparent Compliance. Initial conference and payroll record review and employee interviews revealed that GDOE computes and pays overtime in compliance with this section (Exs. A-1, B-1, B-2).

Section 211 (RK): Apparent Compliance. GDOE maintained all necessary payroll and time records. (Ex. A-1).

Section 212 (CL): Apparent Compliance. Initial conference, tour of establishment payroll record review and employee interviews revealed that GDOE employed no minors during the investigative period. (Exs. B-1, B-2, C-1).

FMLA: The GDOE follows the Government of Guam's FMLA policy and has an FMLA poster posted where it can be seen by all employees. No Policy review was conducted as this is a limited investigation. (Ex. C-1).

FLSNM Section 207(r): The firm had two nursing mothers at its main office headquarters during the investigative period. The nursing mothers were employees of the administration division of GDOE. Both nursing mothers utilized separate rooms located within the buildings they work in to express milk. The nursing mothers were given access to the rooms anytime during the day in order to express milk. The rooms did not all have locks but when being used they would have a sign indicating a nursing mother was using the room. The rooms had electrical outlets and had no windows that were visible to co workers or the public. The rooms had a stool or chair that could be utilized by the nursing mothers (Exs. D-1 thru D-5). Both nursing mothers had access to a mini refrigerator to store their milk. The nursing mothers stated that the rooms they utilized were free from intrusion. The nursing mothers spent different amounts of time expressing milk each day. Both stated that all time spent expressing milk was paid time and not deducted from their hours worked.

At the time of the Initial Conference Superintendent Jon Fernandez and his Director of Finance Taling Taitano agreed that they would have to reach out to all administrators at each of its schools on the island in order to assure GDOE's compliance with the FLSNM requirements. Ms. Taitano provided a copy of an email she sent to all schools principals, assistant principals and administrative officers. The email

requested that fact sheet #73 be posted in all staff break rooms. She also stated she would provide the information cards given to her to all schools so that they may be given to any employees that requested information on the FLSNM requirements (Ex. D-7).

GDOE stated it will make every effort to accommodate nursing mothers at all its schools. They agreed to make sure they are in compliance with requirements of the FLSNM.

Regarding Section 16(e): GDOE was advised that due to the compliance assistance provided on the current case. Any future violations of section 206 or 207 of the act in the future could result in penalties being levied against GDOE..

DISPOSITION

A final conference was held with the firm on July 10, 2017 at the establishment.

Present were: Ailing Taitano (Director of Finance) and WHI (b) (6), (b) (7)(C).

The investigative process and findings were discussed with the firm. Sections 206, 207, 211, 212 and 207(r) of the FLSA were also discussed. FLSNM was discussed in detail with the firm.

No Fair Labor Standards Act violations were found at this time, the firm did not take exception to compliance assistance provided by WHI (b) (6), (b) (7)(C).

Regarding Section 206: The firm was advised of the current federal minimum wage of \$7.25.

Regarding Section 207: The firm was advised that it must pay time and ½ the employee's regular rate for hours worked over 40 in a work week.

Regarding Section 211: The firm was advised of the record keeping requirements of the Act.

Regarding Section 212: The Child Labor requirements of the Act were discussed with the firm.

Regarding Section 216(e): Ms. Taitano was advised that the firm is expected to be aware of and comply with the Minimum Wage, Overtime, Record Keeping, Child Labor and other FLSA regulations and requirements discussed.

The firm was also advised that should violations of the FLSA be discovered in the future, those can be deemed as willful violations.

Regarding FLSNM Section 207(r): As stated in the compliance section GDOE was in compliance with the FLSNM for two of its nursing mothers at its central office location. GDOE had no complaints from administrators who work at the public schools that GDOE oversees. As stated in the compliance section of the narrative Ms. Taitano provided a copy of an email she sent to all schools principals, assistant principals and administrative officers. The email requested that fact sheet #73 be posted in all staff break rooms. She also stated she would provide the information cards given to her to all schools so that they may be given to any employees that requested information on the FLSNM requirements. GDOE also provided a compliance action letter regarding future compliance.

Firm's Response: Ms. Taitano stated the compliance information was greatly appreciated and GDOE will maintain compliance with the FLSA/FLSNM regulations in the future.

Recommendation: (b) (7)(E). It is recommended that case be administratively closed with no further action.

(b) (6), (b) (7)(C) **Notification:** This is a (b) (7)(E) case.

Publications Provided: FLSA HRG; Fact Sheets 7, 28D, 44, 73; Break Time for Nursing Mothers information Cards; DOL Website.

Prepared and Submitted By:

(b) (6), (b) (7)(C)

Investigator (Guam AO)

July 17, 2017

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1854379 Originating District: Seattle District Office
Local Filing Number: 2018-323-08492 Investigating District: Seattle District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 05/18/2018
Assignment Date: 05/20/2018

Employer Information

Trade Name: Jacksons Food Stores

Legal Name: Jacksons Food Stores, Inc

Address: 2631 Walnut St.

EIN: 82-0364157

County: Snohomish

NAICS Code: 445120

Everett, WA 98201

No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 07/02/2017 BNPI:
To: 06/02/2018 Reinvestigation: ☒
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

FMLA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FMLA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	
Total Violations Under FMLA:		1					\$0.00

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

FMLA & FLSANM. ER cov for both. EE elig for both. EE (b) (7)(E) ER did not prov time or space to express milk and did not retn (b) (6) to same hrs and shifts. FLSANM viols: None. FLMA viols: Policy viol - did not affect EE. EE req reduced shifts upon retn to work and did not have set sched prior to leave. ER requires fit for duty prior to return for all leaves that involve med cond of EE but does not provide essential functs with des notice. FC with Susan Rhoades on 8/24/18. ATC. Pubs Prov: FS 44, 73, HRG

WHI Signature: _____ Date: 08/28/2018

Reviewed By: _____ Date: _____

Jacksons Food Stores, Inc
dba Jacksons
2631 Walnut St
Everett, WA 98201

Case ID: 1854379
Local Filing No: 2018-323-08492

EIN: 82-0364157
Contact: Susan Rhoades, VP Human Resources
susan.rhoades@jacksons.com
Phone: 208-884-6657

Fair Labor Standards Act Nursing Mothers

This investigation was initiated (b) (7)(E) (b) (6), (b) (7)(C), (b) (7)(E) employer had not provided a space or time in order for (b) (6), (b) (7)(C) to express milk during (b) (6), (b) (7)(E) work day and harassed (b) (6), (b) (7)(E) about expressing milk at work. (b) (7)(E). The investigation was limited to the Nursing Mothers provision of Section 7 under the FLSA.

Prior History: There has been one other investigation of this company.
Case ID: 1854379. 2012 (b) (7)(E) Full Investigation. No violations. (See Ex D-2)

MODO

The headquarters is in Meridian, ID; therefore the Portland DO is the MODO. (See Ex D-1) (b) (7)(E)

Coverage

Jacksons Food Stores is a corporation that operates gas stations and convenience stores in Oregon, Idaho, Nevada, and Washington. The corporation incorporated in Nevada and has been operating since 1981. (See Ex C-2) The main corporate office is located at 3450 E Commercial Crt, Meridian, ID 83642. John Jackson owns (b) (4) of the company. (Ex C-1a) There are over 240 stores total and over (b) (4) employees enterprise wide. The company grosses well over \$500,000 per year and most employees are actively engaged in interstate commerce as they run credit cards as a regular part of their jobs. All employees are covered under §3(s)(1)(a) of the FLSA on an enterprise basis. Since there are more than 50 employees,

the coverage includes §207(r); the nursing mothers provision of the FLSA. (See Ex C-1a)

The present investigation covers the period July 2, 2017 through June 2, 2018.

Exemptions

None applicable.

Status of Compliance

207(r)(1)(A) – Failure to provide adequate break time (frequency, duration, or complete denial):

No violations found. (b) (6), (b) (7)(C) was given adequate break time to express (b) (6), (b) (7)(C) breast milk. (See Ex B-1) (b) (6), (b) (7)(C) (b) (7)(E) was harassed by one of (b) (6), (b) (7)(C) managers about taking the time to express milk and that (b) (6), (b) (7)(E) had no problem at other times. (See Ex B-1a) There is no evidence (b) (6), (b) (7)(C) and evidence revealed that the employee had actually been allowed to breast feed (b) (6), (b) (7)(C) baby during (b) (6), (b) (7)(C) breaks when the baby was brought to (b) (6), (b) (7)(C) in addition to pumping.

207(r)(1)(B)- Failure to provide functional space (bathroom not permissible, space not free from intrusion, not shielded from view):

No violation found. (b) (6), (b) (7)(C) worked at two different locations upon (b) (6), (b) (7)(C) return to work. (b) (6), (b) (7)(C) claimed that (b) (6), (b) (7)(C) had no problems with time or space at one location and had problems with (b) (6), (b) (7)(C) manager at (b) (6), (b) (7)(C) main location due to a personal issue, which led to giving (b) (6), (b) (7)(C) a hard time when (b) (6), (b) (7)(C) needed to express milk, including not providing (b) (6), (b) (7)(C) office, which is the most private space in the establishment. There are only two spaces available at most stores for nursing moms to use: the manager's office and a storage space. (See Ex B-1b, C-1d) Some of the stores have cameras in their storages spaces, and the camera coverage can vary from store to store. (See ExC-1d) The employees are not usually aware what area the cameras cover. (b) (6), (b) (7)(C) stated (b) (6), (b) (7)(C) was uncomfortable using the storage room at (b) (6), (b) (7)(C) main location because (b) (6), (b) (7)(C) thought it was being recorded. (See Ex 1-b) The investigation revealed that the area provided (b) (6), (b) (7)(C) was not covered by the camera. There is no evidence that (b) (6), (b) (7)(C) was not allowed to use the manager's office at either location. \

207(r)(2) – Compensation for break time: No violations found. The employer paid (b) (6), (b) (7)(C) for all time expressing milk. (See Ex B-1b)

207(r)(3) – Undue Hardship: No violations. The employer has many employees at or near the location

where the employee works and made no objection to its obligation to comply with the law.

Retaliation: (b) (6), (b) (7)(C) (b) (7)(E) the employer terminated (b) (6), (b) (7)(C) for asserting (b) (6), (b) (7)(C) rights. There was no evidence to suggest that the termination was retaliatory. The employer provided documents to show the employee was late several times, up to 75 minutes in one instance with no call to let them know (b) (6), (b) (7)(C) would be late. (b) (6), (b) (7)(C) admitted to WHI (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) had been late.

Disposition

WHI (b) (6), (b) (7)(C) conducted a final conference via telephone with Susan Rhoades on August 24, 2018. WHI (b) (6), (b) (7)(C) explained coverage and the requirements under the law. At the initial conference, the company admitted they did not have a Nursing Mothers policy in writing and had discussed with WHI (b) (6), (b) (7)(C) what they should include. At the final conference, Ms. Rhoades had already implemented a companywide manager training on the subject in addition to start updating the employee handbook to include a written policy. The parties agreed that the company worked well to accommodate this employee but that the employer could have done more to reach out to the employee and assure they were in compliance. WHI (b) (6), (b) (7)(C) suggested showing the employees the camera range beforehand, arranging a set space for the employee before (b) (6), (b) (7)(C) return to work to alleviate any confusion, and/or providing privacy screens to assure privacy. Ms. Rhoades agreed to all of the suggestions. (b) (6), (b) (7)(C) notified on August 28, 2018.

Publications Provided

Fact sheets 44, 73, HRG

Recommendation

Recommend close administratively (b) (7)(E).

Further Correspondence

Susan Rhoades, VP Human Resources
susan.rhoades@jacksons.com
Phone: 208-884-6657
3450 E. Commercial Crt
Meridian, ID 83642

Jacksons Food Stores, Inc
dba Jacksons
2631 Walnut St
Everett, WA 98201

Case ID: 1854379
Local Filing No: 2018-323-08492

EIN: 82-0364157
Contact: Susan Rhoades, VP Human Resources
susan.rhoades@jacksons.com
Phone: 208-884-6657

FMLA Narrative

Reason for Investigation

This investigation was initiated (b) (7)(E) (b) (6), (b) (7)(C) (b) (7)(E) employer failed to return (b) (6), (b) (7)(C) to (b) (6), (b) (7)(C) same position when (b) (6), (b) (7)(C) returned from FMLA covered leave and reduced (b) (6), (b) (7)(C) hours and working times. (b) (7)(E), but other violations were found.

Prior History: There has been one other investigation of this company.
Case ID: 1646076. 2012 (b) (7)(E) Full Investigation. No violations. (See Ex D- 2)

Coverage

Jacksons Food Stores is a corporation that operates gas stations and convenience stores in Oregon, Idaho, Nevada, and Washington. The corporation incorporated in Nevada and has been operating since 1981. (See Ex C-2) The main corporate office is located at 3450 E Commercial Crt, Meridian, ID 83642. John Jackson owns (b) (4) of the company. (Ex C-1a) There are over (b) (4) employees enterprise wide and there are 240 employees within the Seattle/Everett area, within 75 miles of the complainant. (See Ex C-1a) The employer is covered under the FMLA.

MODO: The headquarters is in Meridian, ID; therefore the Portland DO is the MODO. (See Ex D-1)
(b) (7)(E)

Period of Investigation: July 2, 2017 through June 2, 2018.

Policy Review: A policy review was done and one violation was found. The employer requires a fitness for duty note from the doctor before returning to work for all leaves that involve a medical reason for the employee. (See Ex C-1b) This would be fine because it applies to all employees the same except the company does not send out the list of essential functions with the designation notice as required under §825.300(c)(6)(d)(3). Medical certifications are not required either so the list the employee's essential functions are not sent out to the employee or the provider.

Eligibility

(b) (6), (b) (7)(C) was eligible for FMLA covered leave when (b) (6), (b) (7)(C) originally applied for it (b) (6), (b) (7)(C) as (b) (6), (b) (7)(C) had worked for the company for at least 12 months, worked at least 1,250 hours in the 12 months preceding the start of (b) (6), (b) (7)(C) leave, and worked at a site with at least 50 employees within 75 miles. (See Exs B-1, D-6a)

Employee Notification

Both employee and employer stated there were no problems with employee notification timing under §825.305(b). (See Exs B-1a, D-5a)

Reason for Leave/Qualifying Condition

(b) (6), (b) (7)(C) requested leave for the birth and bonding of (b) (6), (b) (7)(C) child, which was approved. (See Exs B-1b, D- 5c)

Status of Compliance

The employer did not violate (b) (6), (b) (7)(C) rights under the FMLA. (b) (6), (b) (7)(C) (b) (7)(E) was not given the same amount of work hours or the same shifts when (b) (6), (b) (7)(C) returned from leave. Prior to (b) (6), (b) (7)(C) leave, (b) (6), (b) (7)(C) claimed that (b) (6), (b) (7)(C) was working at least 40 hours per week and (b) (6), (b) (7)(C) hours were reduced to 32 hours per week upon (b) (6), (b) (7)(C) return to work. (b) (7)(E) was not returned to the same shifts that she (b) (6), (b) (7)(C) prior to taking (b) (6), (b) (7)(C) leave. (b) (6), (b) (7)(E) interview revealed that (b) (6), (b) (7)(E) did not have a set schedule prior to (b) (6), (b) (7)(C) leave. (See Ex B-1b) The records show that (b) (6), (b) (7)(E) requested to use intermittent leave in order to work a reduced schedule and that (b) (6), (b) (7)(E) requested shifts no longer than 4 – 6 hours. (See Ex

D-5g, 5i, 5k) The employer accommodated (b) (6), (b) (7)(C) requests as best as they could and did not violate the FMLA or (b) (6), (b) (7)(C) rights.

Disposition

A final conference was held via telephone with Human Resource Manager Susan Rhoades on August 24, 2018. WHI (b) (6), (b) (7)(C) discussed the claim and went over the violation. WHI (b) (6), (b) (7)(C) explained the FMLA requirement on fitness for duty requests. Ms. Rhoades agreed that they would comply and start to attach a list of essential functions to the designation notice.

Publications Provided: HRG, FS 28, 44, 73

Employee Notification: The employee was notified on August 28, 2018.

Recommendations

It is recommended that the case is closed administratively (b) (7)(E).

All correspondence should be directed to:
Contact: Susan Rhoades, VP Human Resources
susan.rhoades@jacksons.com
Phone: 208-884-6657
3450 E. Commercial Crt
Meridian, ID 83642

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1800848 Originating District: West Covina District Office
Local Filing Number: 2016-186-08249 Investigating District: West Covina District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 09/01/2016
Assignment Date: 09/01/2016

Employer Information

Trade Name: Nike Factory Store Legal Name: Nike, Inc.
Address: 2796 Tanger Way Unit 218 EIN: 93-0584541
Barstow, CA92311 County: San Bernardino
NAICS Code: 453998
No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 09/15/2014 BNPI:
To: 09/14/2016 Reinvestigation: ☒
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

21.25 Hrs. FLSANM. Ltd. Inv. Ent. Cov. (b) (6), (b) (7)(C) (b) (7)(E) ER failed to offer an adequate place to express breast milk per Section 7 (r) (1) (B). No apparent violations found. ER found to offer place consistent with prov of Act. No other FLSA vios uncovered. FC held with ER. J. Baumann over phone on 10/07/16. ER ATC in future with Act. HRG and FSs provided on site. WHI recomm. admin closure of file with no further action (b) (7)(E).

WHI Signature: _____ Date: 10/07/2016

Reviewed By: _____ Date: _____

Nike Retail Services, Inc.
Trade Name: Nike Factory Store
2796 Tanger Way, Unit #218
Barstow, CA 92311
Telephone: 760-253-2810
EIN #: 93-0584541

Local Filing #: 2016-186-08249

FLSA Narrative

Coverage:

Nike Retail Services, Inc.; Trade Name: Nike Factory Store [Nike Factory Store - Barstow] is a retail store engaged in the sale of footwear, apparel, equipment, and accessories.

Nike Factory Store - Barstow is one of 784 Nike Factory Stores that operate worldwide, including 196 that operate within the U.S. Nike Retail Services, Inc. is a wholly-owned subsidiary of Nike, Inc., located at One Bowerman Dr., Beaverton, OR 97005. Nike Retail Services, Inc. was incorporated in the State of Oregon on 05/30/1985 [See Exhibit D-5]. Nike Factory Store – Barstow began operations approximately 3 years ago.

Nike Factory Store – Barstow was represented by Jessica Baumann, senior paralegal specialist, of Nike Legal, located at Nike World Headquarters, One Bowerman Dr., Beaverton, OR 97005; phone: 971-473-1543.

Nike Factory Store – Barstow employs (b) (4) employees (EEs) that handle goods that have moved in interstate commerce, such as Nike® brand footwear and athletic gear, manufactured throughout the world, in locations such as Vietnam, China, and Indonesia [See Exhibit C-2d]. Nike Factory Store – Barstow has an annual dollar volume (ADV) of sales of approximately (b) (4) per annum [See Exhibit C-1a]. Nike, Inc.'s ADV for the past 3 fiscal years (year-ending 05/31) is as follows: 2014 - (b) (4); 2015 - (b) (4) and 2016 - (b) (4) [See Exhibit C-2]. All EEs are covered on an enterprise basis per § 3 (s) (1) (A) of the Act. The FLSA break time for nursing mothers provisions [FLSANM] apply due to the fact that Nike Factory Store – Barstow was found to employ at least 50 EEs, and the affected EE was not found to be exempt from § 7 of the Act. This was a limited investigation that

focused on determining compliance with the FLSANM provisions of the Act. The period of investigation was 09/15/2014 – 09/14/2016.

The Portland District Office is the main office district office (MODO). (b) (7)(E)

(b) (7)(E)

[See Exhibit D-1 – D-1g] (b) (7)(E)

Exemptions:

The applicability of FLSA exemptions was not tested as part of this limited FLSANM investigation. (b) (6), (b) (7)(E)
(b) (7)(E) is a non-exempt, hourly employee.

Status of Compliance:

Investigative History:

Nike Factory Store – Barstow has no investigative history. However, Nike Retail Services, Inc. was found to be the subject of 3 prior (b) (7)(E) investigations (including 1 limited and 2 full investigations):

Case ID: 300601

This was a 1997 (b) (7)(E) investigation (limited to CL) of a Nike Factory Store in Bellport, NY as part of a (b) (7)(E). No violations were found [See Exhibit D-10 – D-10a].

Case ID: 1512884

This was a 2008 (b) (7)(E) full investigation of a Nike Factory Store in Ellenton, FL as part of a (b) (7)(E). CL violations were found due to 2 minors having been found to operate compactor machines (including a trash compactor and cardboard compactor), in violation of HO 12. ER ATC [See Exhibit D-9 – D-9b].

Case ID: 1540930

This was a 2009 (b) (7)(E) full investigation of a Nike Factory Store in Elizabeth, NJ. A CL violation was

found due to 1 minor having been found to operate a cardboard compactor, in violation of HO 12. ER ATC [See Exhibit D-8 – D-8b].

Status:

This investigation was initiated (b) (7)(E) (b) (6), (b) (7)(C) of Nike Factory Store – Barstow who works as an hourly, non-exempt associate. (b) (6), (b) (7)(C) of an infant child, stated that (b) (6), (b) (7)(C) began working for Nike Factory Store – Barstow (b) (6), (b) (7)(C), at which point (b) (6), (b) (7)(C) child was about 2 months old. (b) (6), (b) (7)(C) (b) (7)(E), on/around (b) (6), (b) (7)(C) date of hire, (b) (6), (b) (7)(C) notified management of (b) (6), (b) (7)(C) need of a location to express breast milk; and in response was told by management that (b) (6), (b) (7)(C) could either use the bathroom located at the store, or use (b) (6), (b) (7)(C) personal vehicle, to express breast milk.

Section 6:

The minimum wage provisions of the Act were not considered as part of this limited FLSANM investigation.

Section 7 (a) (1):

The overtime provisions of the Act were not considered as part of this limited FLSANM investigation.

Section 7 (r) (1) (A):

According to § 7 (r) (1) (A), an employer shall provide, “a reasonable break time for an employee to express breast milk for her nursing child for 1 year after the child's birth each time such employee has need to express the milk.”

No apparent violations found. Nike Factory Store – Barstow was found to provide reasonable break time to (b) (6), (b) (7)(C) to express breast milk, including break time needed beyond the ordinary meal and rest breaks provided. Though FLSANM breaks are considered non-compensable, the Nike Factory Store – Barstow was found to have a policy to compensate EEs for all FLSANM breaks.

Section 7 (r) (1) (B):

According to § 7 (r) (1) (B), an employer shall provide, “a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk.”

No apparent violations found. On 09/14/2016, WHI conducted an initial conference at Nike Factory Store – Barstow with (b) (6), (b) (7)(C), store manager, and (b) (6), (b) (7)(C) assistant store manager. According to (b) (6), (b) (7)(C) informed management of (b) (6), (b) (7)(C) need to express breast milk shortly after beginning employment with the store on/around 07/15/2016. (b) (6), (b) (7)(C) stated that, upon (b) (6), (b) (7)(C) notification of the need to express breast milk, store management offered (b) (6), (b) (7)(C) a large, ADA-compliant room located within the store's fitting room location, known as the “Locker Room” [See Exhibit C-1c]. Thatch stated that (b) (6), (b) (7)(C) refused to use this location to express breast milk because (b) (6), (b) (7)(C) was not comfortable with the traffic of customers (travelling to and from the fitting rooms) via the hallway adjacent to the room designated for (b) (6), (b) (7)(C) use. (b) (6), (b) (7)(C) acknowledged a discussion with (b) (6), (b) (7)(C) regarding the use of (b) (6), (b) (7)(C) personal vehicle for the expressing of breast milk, but clarified that this was only a suggestion that (b) (6), (b) (7)(C) made after offering (b) (6), (b) (7)(C) the “Locker Room” site. (b) (6), (b) (7)(C) a recent mother, explained that, at (b) (6), (b) (7)(C) previous employer, (b) (6), (b) (7)(C) used (b) (6), (b) (7)(C) personal vehicle to express breast milk because (b) (6), (b) (7)(C) found it more convenient. (b) (6), (b) (7)(C) went on to explain that, since (b) (6), (b) (7)(C) had expressed dissatisfaction with the “Locker Room” location, (b) (6), (b) (7)(C) in coordination with Nike Corporate Headquarters, had been in the process of developing additional locations to offer (b) (6), (b) (7)(C) (and other EEs that needed to express breast milk) that would meet the FLSANM requirements – the result of which was the identification of 3 additional locations: an audio/visual room, a janitorial room, and a family room (located in a public restroom in short walking distance from the store).

WHI accompanied (b) (6), (b) (7)(C) for a tour of the establishment, including a tour of the 4 locations (b) (6), (b) (7)(C) identified as places EEs could use to express breast milk. WHI found that the Locker Room, the audio/visual room, and the janitorial room meet the FLSANM requirements – none of these locations are bathrooms, they provide lockable doors, and are shielded from view and free from intrusion from coworkers and the public. WHI notified (b) (6), (b) (7)(C) that the family room (located in the adjacent public restroom) did not meet the FLSANM requirements since it did not provide a lockable door that would ensure an EE's privacy.

On 10/05/2016, WHI held a telephone conversation with Jessica Baumann [Baumann], senior paralegal specialist, Nike Legal. During this conversation, Baumann stated that, after researching the incident, she

had found that 2 assistant store managers had offered (b) (6), (b) (7)(C) places to express breast milk on 2 separate occasions shortly after (b) (6), (b) (7)(C) expressed (b) (6), (b) (7)(C) need to express breast milk. According to Baumann, on 07/28/2016, assistant manager Kaylee Cisneros [Cisneros] offered (b) (6), (b) (7)(C) the Locker Room, an office, as well as a storage room as locations to express breast milk; and on 07/30/2016, Thach gave (b) (6), (b) (7)(C) a tour of the 3 locations identified by Cisneros on 07/28/2016. On/around 07/30/2016, according to Baumann, (b) (6), (b) (7)(C) allegedly refused the locations offered on the basis that they were “too distracting” [See Exhibit E-5].

Section 11:

The record-keeping provisions of the Act were not considered as part of this limited FLSANM investigation.

Section 12:

The child labor provisions of the Act were not considered as part of this limited FLSANM investigation.

Disposition:

On 10/07/2016, WHI held a final conference with Baumann via telephone. At this time, the FLSANM provisions were discussed in detail.

WHI notified Baumann that the investigation had revealed no apparent violations of the Act. WHI further notified that the Locker Room (as well as other locations identified on site), met the regulatory requirements of the employer providing “a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk” per § 7 (r) (1) (B) of the Act.

WHI requested that signage, to the effect of “Employees Only” or “Private” be affixed to the door of any room used for the purposes of expressing breast milk to further ensure privacy. Baumann agreed to consider developing signage and a policy to utilize such signage for the aforementioned purposes. Baumann agreed to comply with the provisions of the Act in the future.

(b) (6), (b) (7)(C) Notification of Findings:

On 09/16/2016, WHI notified (b)(7)(C) that ER had identified and made available 3 locations at the worksite that meet the FLSANM requirements that ER provide a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public. (b)(6), (b)(7)(C) stated that (b)(6), (b)(7)(C) would tour the 3 places made available by ER, and would follow-up with WHI if ER did not abide by FLSANM provisions in the future.

Publications:

HRG; Fact Sheets 28, 28D, 44, 73, 77A, and 80.

Recommendations:

WHI recommends that the case file be administratively closed with no further action (b)(7)(E)

(b)(6), (b)(7)(C)

Wage and Hour Investigator
10/07/2016

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1812647 Originating District: Phoenix District Office
Local Filing Number: 2017-279-10716 Investigating District: Phoenix District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 01/30/2017
Assignment Date: 01/30/2017

Employer Information

Trade Name: Lolo's Chicken and Waffles

Legal Name: Lolos Inc

Address: 3133 N Scottsdale Rd

EIN: 20-8275343

County: Maricopa

NAICS Code: 722110

Scottsdale, AZ85251

No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 04/01/2016

BNPI:

To: 03/30/2017

Reinvestigation: ☐

Investigation Type: (b) (7)(E)

Recurring Violation: ☐

Investigation Tool: Limited Investigation

Future Compliance Agreed: ☐

Compliance Status: Agree to Comply

Involved in AG: ☐

Recommended Action:

BWFS: ☐

RO/NO Review: ☐

CMP: ☐

Follow Up Investigation: ☐

Litigation: ☐

Other Action: ☐

Civil Action: ☐

Denial of Future Certificate: ☐

Criminal Action: ☐

BW Payment Deadline:

Submit For Opinion: ☐

Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

Total Violations Under FLSNM:

2

\$0.00

WHISARD Compliance Action Report

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

14 hrs. Limited FLSNM invest. ER is covered. (b) (7)(E) the ER did not provide (b) (6), (b) (7)(E) with adequate space and time to express milk. (b) (6), (b) (7)(E) also stated that the ER retaliated by reducing (b) (6), (b) (7)(E) hours. (b) (7)(E) There was a Sect 7(R)(1)(A) and a Sect 7(R)(1)(B) violation found. ER agreed to comply in the future by buying portable privacy stations and inserting nursing mother text in the EE Handbook. Reccmd case be admin closed.

WHI Signature: _____ Date: 04/05/2017

Reviewed By: _____ Date: _____

Lolo's Inc
dba: Lolo's Chicken and Waffles
1220 S Central Ave.
Phoenix, AZ 85004
(480)695-9404
EIN: 20-8275343
Case ID: 1812647

Point of Contact: Tracy Williams
Human Resource Manager
Tracy@LoloCw.com
Cell: (480)695-9404
1220 S Central Ave.
Phoenix, AZ 85004

FLSANM Narrative

COVERAGE:

Subject firm is a soul food franchise restaurant (Exhibit C-1). The subject firm was incorporated in the state of Arizona on 07/07/2000 (Exhibit C-2). There are 5 locations in Arizona and three others in Nevada, Texas and Nebraska (Exhibit C-1, 3). The corporate headquarters is located at 1220 Central Avenue, Phoenix, AZ 85004 (Exhibit C-1).

Mrs. Tracy Williams provided the following information on March 30th 2017: she is the Human Resource Manager and the sister of the owner Mrs. Rashida White. Mrs. Rashida White is (b) (4) owner and her husband Mr. Larry White is (b) (4) owner. Mr and Mrs White own the 5 locations in Phoenix and are invested in the other three locations. Mrs. Rashida White is responsible for significant decision-making including payroll decision and working conditions. Mrs. White is the 203(d) employer (Exhibit C-1). Mrs.

Williams stated that the company has grosses about (b) (4) per location for the last three years. Employees regularly handle goods from out of state (Exhibit C-1). Enterprise Coverage under section 203(s) (1)(a) of the Act is applicable for this company. Servers and hostesses handle credit cards on a daily basis and are individually covered. Further, for purposes of determining coverage under the break time requirements for nursing mothers, the subject firm employs well over 50 employees (Exhibit C-1).

This investigation is limited to FLSA Section 207(r) "Break Time for Nursing Mothers: during the period April 1, 2016 through March 30, 2017.

Exemptions:

Not applicable. (b) (6), (b) (7)(C) is a non-exempt employee paid on an hourly basis and is therefore subject to Section 7 of the FLSA and the protections of the Break Time for Nursing Mothers provision of the FLSA (Exhibit C-1).

Status of Compliance

Prior History: No prior history found in WHISARD.

MODO: Phoenix District Office is the MODO (Exhibit D-1).

Reason for the investigation: (b) (6), (b) (7)(C) (b) (7)(E) a violation of the Patient Protection and Affordable Care Act amendment to the FLSA (Break Time for Nursing Mothers). (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) is currently a waitress/bartender. (b) (6), (b) (7)(C) has been working for the company since 2013. (b) (6), (b) (7)(C) (b) (7)(E) Lolo's Chicken and Waffles violated (b) (6), (b) (7)(C) nursing mother rights by refusing to provide (b) (6), (b) (7)(C) sufficient break time to pump (b) (6), (b) (7)(C) milk and provide (b) (6), (b) (7)(C) with an adequate space. Additionally (b) (6), (b) (7)(C) stated that HR told (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) needed to fill out FMLA paperwork in order to be able to take breaks. (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) was retaliated against and (b) (6), (b) (7)(C) hours were reduced. (b) (7)(E)

Timeline (Exhibit D-5, 6, 7, 8, and 12):

- (b) (6), (b) (7)(C) took maternity leave from 01/2016 to 04/2016. (b) (6), (b) (7)(C) did qualify for FMLA.

- On 04/2016 (b) (6), (b) (7)(C) started pumping at work. (b) (6), (b) (7)(C) stated that the manager allowed (b) (6), (b) (7)(C) to take breaks and (b) (6), (b) (7)(C) would use the employee bathroom.

On 09/26/2016 the HR manager, Tracy William, pulled (b) (6), (b) (7)(C) aside and stated that (b) (6), (b) (7)(C) was not given permission to take a break. (b) (6), (b) (7)(C) did not clock out and (b) (6), (b) (7)(C) did not find anyone to cover (b) (6), (b) (7)(C) tables while on break. Mrs. Williams told (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) would have to take FMLA leave in order to take breaks and could no longer take breaks. (b) (6), (b) (7)(C) was also told that there was no space other than the bathroom available.

(b) (6), (b) (7)(E) On 02/16/2017 WHI (b) (6), (b) (7)(C) contacted (b) (6), (b) (7)(C) and took an additional statement. (b) (6), (b) (7)(C) notified WHI that (b) (6), (b) (7)(C) was still working for the company but no longer pumping due to (b) (6), (b) (7)(C) milk drying up. (b) (6), (b) (7)(C) also notified WHI that (b) (6), (b) (7)(C) was speaking to an attorney regarding filing a suit against the company for pain and suffering due to no longer being able to express milk to (b) (6), (b) (7)(C) child.

An initial conference was held on March 30th 2017 by WHI (b) (6), (b) (7)(C) with Mrs. Tracy Williams the Human Resource Manager. WHI asked Mrs. Williams why she was not notified that the employee was expressing milk until 5 months after the employee came back from FMLA leave. Mrs. Williams stated that the manager never notified her. The employee was taking breaks and using the employee's bathroom. Once Mrs. Williams was notified she stated that she told the employee that she would have to do research on nursing mothers because it was the first time she has come upon the situation. WHI asked Mrs. William whether she had told (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) would have to file FMLA paperwork in order to take the breaks. Mrs. Williams stated that she does not remember telling (b) (6), (b) (7)(C) that. She stated that after a week she notified (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) could take breaks but that (b) (6), (b) (7)(C) needed to clock out and notify (b) (6), (b) (7)(C) supervisor. She also stated that there was no area in the restaurant for (b) (6), (b) (7)(C) to express milk privately other than the bathroom. The office is small and has a camera which cannot be turned off and there is a lot of private information in the office. She let (b) (6), (b) (7)(C) decide on (b) (6), (b) (7)(C) own where (b) (6), (b) (7)(C) would decide to pump without directing (b) (6), (b) (7)(C). The issue was not brought up again to the HR Manager until (b) (6), (b) (7)(C) was contacted by The Wage and Hour division (Exhibit C-1).

Section 7(R)(1)(A)-Reasonable Break Time: Violation found. Lolo's Chicken and Waffles failed to acknowledge that (b) (6), (b) (7)(C) was nursing for (b) (6), (b) (7)(C) first 5 months therefore not providing (b) (6), (b) (7)(C) with time or space. Therefore they were not providing (b) (6), (b) (7)(C) sufficient time to pump (Exhibit B-1, C-1).

Section 7(R)(1)(B)-A Place, Other than a Bathroom, Shielded from View and Free from Intrusion:

Violation found. Lolo's failed to acknowledge that (b) (6), (b) (7)(C) was nursing for (b) (6), (b) (7)(C) first 5 months therefore not providing (b) (6), (b) (7)(C) with time or space. After 5 months the ER notified (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) could take the breaks but they did not have an adequate space to provide (b) (6), (b) (7)(C) therefore (b) (6), (b) (7)(C) would have to decide where to express milk on (b) (6), (b) (7)(C) own (Exhibit B-1, C-1).

Section 15(A)(3)-Prohibiting Retaliation Under the FLSA: Violation was not found. (b) (6), (b) (7)(C) still currently works for the company. (b) (6), (b) (7)(C) initially (b) (7)(E) that (b) (6), (b) (7)(C) hours were reduced but in a later statement (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) picked up hours and was still working the same amount of hours per week (Exhibit B-1).

Disposition

Only one conference was held with the HR Manager, Mrs. Tracy Williams, on March 30th, 2017 with WHI (b) (6), (b) (7)(C). During this conference compliance for the future was discussed and the ER agreed to comply in the future. She stated that all of the stores are set up the same. She plans on buying portable privacy stations to set up in the office. In the future employees who are nursing can take breaks for as long as needed as long as they clock out and notify their managers. Mrs. William also showed WHI (b) (6), (b) (7)(C) where she would be inserting nursing mother text in the employee handbooks which all employees receive. The handbooks will also be used in the franchised locations (Exhibit C-1).

Recommendations

(b) (7)(E) is recommended that the case be administratively closed.

(b) (6), (b) (7)(C) Notification

On March 30th, 2017 (b) (6), (b) (7)(C) was notified of the results on the investigation.

Publications

The following publications were discussed and provided: Handy Reference Guide, Fact Sheet #44, 73 and 77A.

(b) (6), (b) (7)(C)

Wage and Hour Investigator
03/05/2017

WHISARD Compliance Action Report

U.S. Department of Labor Wage and Hour Division

Case ID: 1821803 Originating District: Las Vegas District Office
Local Filing Number: 2017-280-02071 Investigating District: Las Vegas District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 05/08/2017
Assignment Date: 05/08/2017

Employer Information

Trade Name: SLS Las Vegas Legal Name: Las Vegas Resort Holdings, LLC
Address: 2535 S Las Vegas Blvd EIN: 65-1312126
County: Clark
NAICS Code: 721120
Las Vegas, NV89109 No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 02/07/2017 BNPI:
To: 05/15/2017 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☐
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

11 hrs. Enterprise Cov. Nature of business- Hotel casino. Nursing Mother not provided with reasonable breaks to express milk. FC on 5/11/17 at est. where ER ATC. Fact Sheets 44, HRG. Fact Sheet 73. It is recommended that case be closed administratively.

WHI Signature: _____ Date: 05/17/2017

Reviewed By: _____ Date: _____

Case File # 1821803

**Las Vegas Resort Holdings, LLC.
Dba: SLS Las Vegas
2535 S. Las Vegas Blvd.
Las Vegas, NV. 89109
Tel. (702) 761-7000**

**Contact :
Vanessa Smith
HR Business Partner
Tel. (702) 761-7511
Fax (702) 761-7528
Vanessa.smith@sllasvegas.com**

EIN : 65-1312126

NURSING MOTHERS FLSA NARRATIVE REPORT

COVERAGE :

Subject firm operates in Las Vegas, NV. Subject firm is a Hotel Casino that's been in business since 2014. There are no other locations. The company employs about (b) (4) employees.

The firm is owned by StockBridge Real Estate and the officials in charge are : Vanessa Smith (HR

Business Partner); Vince Collura (VP of TableGames) They are in charge of the daily operations and day to day decision making. They are 3 (d) employers.

Sec. 3(s)(A)(1)(ii) : The ADV for the past three years is in excess of \$ 500,000. This information was provided by Ms. Smith. Alcoholic beverages such as Tequila is originated in Mexico, Beer is originated in different states, such as Missouri . The firm has more than two employees who handle food and supplies, all which are originated out of the State of Nevada. Therefore, all employees are subject to Enterprise Coverage.

Sec. 3(s)(A)(1)(i) : Office people handle the internet, phones, mail. Therefore, Individual Coverage was established for office employees.

(b) (6), (b) (7)(C) is a covered nursing employee with a child under the age of 1. Therefore, 7(r) of the FLSA applies.

The period of investigation covers from February 7, 2017 through May 15, 2017 and is limited to the [REDACTED]

13 (a) (1) is applicable to :

Exemptions were not reviewed. The investigation was limited to (b) (6), (b) (7)(C) who is an hourly employee.

Status of Compliance:

Prior History : A search of WHISARD shows no prior investigations of this firm under this Act.

MODO : Las Vegas, NV. There are no other locations.

Reason for Investigation : This investigation was initiated by (b) (7)(E) (b) (6), (b) (7)(C)

(b) (7)(E) I (b) (6), (b) (7)(C) was written up and assessed points for taking an additional 15 minutes to express milk.
(b) (7)(E) . See Disposition Section.

Section 6 : This was a limited investigation. A review of the profile pay period was conducted. No apparent minimum wage violations found.

Section 7: This was a limited investigation. A review of the profile pay period was conducted. No apparent overtime violations found.

Sec. 7 (r)-Nursing Mothers : Violation found. The employer failed to provide (b) (6), (b) (7)(C) with a reasonable amount of time to express milk as frequently as needed. See Disposition Section.

Section 11 : This was a limited investigation. A review of the profile pay period was conducted. No record keeping violations found.

Section 12 : Not applicable. The investigation was limited to (b) (6), (b) (7)(C) who is not a minor.

FMLA Policy Review : FMLA policy review was conducted and no apparent violations found.

Disposition

On 05/11/17 I held a Conference at the establishment with Vanessa Smith (HR Business Partner) and Rich Danzak (Vice President of HR). During the Conference I discussed in detail (b) (6), (b) (7)(C)

(b) (7)(E) and advised employer that (b) (6), (b) (7)(C) has to be provided with reasonable amount of time to express milk. They stated that since (b) (6), (b) (7)(C) is a dealer, (b) (6), (b) (7)(C) is provided with a 20 minute break every hour and they could not extend it because it would cause an impact and problems with the other dealers that are backing (b) (6), (b) (7)(C) up. I explained that regardless of this, the nursing mothers have to be allowed to express milk as frequently as needed and that the duration of each break will vary. I provided them with fact sheet 73 and explained the break time requirements for nursing mothers.

The employer agreed to comply by stating that they would allow the time needed to express milk, they would remove any write ups as well as any points assessed. Also, they agreed to future compliance by stating that they will allow nursing mothers to take a reasonable amount of break time to milk as frequently as needed.

(b) (6), (b) (7)(C) **Notification :** (b) (6), (b) (7)(C) was apprised of the results of the investigation via phone on 05/15/17.

Recommendation :

I recommend case be closed administratively.

Publications : The employer was provided with HRG, Fact Sheet 44, 73.

(b) (6), (b) (7)(C)
Wage & Hour Investigator
05/17/17.

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1821862 Originating District: Sacramento District Office
Local Filing Number: 2017-302-07563 Investigating District: Sacramento District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 05/09/2017
Assignment Date: 05/09/2017

Employer Information

Trade Name: Pacific Staffing Legal Name: Pacific Temporary Services, Inc.
Address: 855 Howe Ave, Suite 4 EIN: 68-0123378
County: Sacramento
NAICS Code: 561320
Sacramento, CA95825 No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 07/15/2015 BNPI: 0
To: 07/14/2017 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

(b) (7)(E) Limited to NM prov. COV: 3(s)(1)(A); ADV>\$500k/yr & EEs hndle gds in interst cmrce. EX: None. SOC: NM policy viol. INs w/ former NMs disclosed to other vios. DISP: FC w/ Mgr Mr. Jay Jurschak @ estab 09/05/17. ATFC. Signed ECA & emailed revised policy. Pubs: See narrative.

WHI Signature: _____ Date: 09/15/2017

Reviewed By: _____ Date: _____

Pacific Temporary Services, Inc.
dba Pacific Staffing
EIN: 68-0123378
855 Howe Avenue, #4
Sacramento, CA 95825
(916) 925-2300

Case ID #1821862
Case File #2017-302-07563

Point of Contact:
Mr. Jay Jurschak, Manager
855 Howe Avenue, #4
Sacramento, CA 95825
(916) 925-2300

Fair Labor Standards Act (FLSA) – Nursing Mothers Narrative

COVERAGE:

Pacific Temporary Services, Inc. dba Pacific Staffing, MedStaff and ExecSearch opened and incorporated in Nevada in approximately March 1987. *(See Exhibit C-1)* The firm is owned by Mr. Jay Jurchak (b) (4) and Ms. Preet Kuar (b) (4) *(See Exhibit C-1-a[reverse])* Pacific Staffing functions as a staffing and direct-hire agency that provides services to clients throughout California. *(See Exhibit C-1)* There are approximately (b) (4) employees (“associates”) working for clients at multiple locations. *(See Exhibit C-1[reverse])* Mr. Jurchak and Ms. Kuar meet the definition of employers under Section 203(d) of the Fair Labor Standards Act (FLSA) because they oversee, schedule, hire, and fire employees. *(See Exhibit B-1)*

The gross sales (annual dollar volume) of the enterprise are as follows: 2014 - (b) (4); 2015 - (b) (4); 2016 - (b) (4). *(See Exhibit C-2)* Employees regularly handle goods that have traveled in interstate commerce, such as Kleenex Facial Tissues from Texas, Expo Dry Erase Markers from Illinois, and Purell Hand Sanitizer from Ohio. *(See Exhibit C-3)* As such, enterprise coverage under Section 203(s)(1)(A) of the FLSA applies for the period of investigation.

Mapping: Pacific Staffing provides staffing and direct-hire services to various clients throughout California. *(See Exhibit C-1)* Pacific Staffing also does business as MedStaff, which provides staffing to hospitals, such as Sutter Health. *(See Exhibit C-1)* Per Mr. Jurchak, Pacific Staffing only provides office professional, rather than labor, employees to clients. *(See Exhibit C-1[reverse])* Pacific Staffing provides associates directly to Sutter, and these employees typical work in customer service, accounting, finance, office clerical, and administrative positions. *(See Exhibit C-1[reverse])* However, to Mr. Jurchak's knowledge, Pacific Staffing does not provide associates to clients

who contract with Sutter Health. *(See Exhibit C-1[reverse])*

Period of Investigation: 07/18/2015 to 07/17/2017.

MODO: Sacramento, CA District Office. No MODO record is required as the firm is not part of a multiunit enterprise. *(See Exhibit C-1)* The firm's headquarters and only office is at 855 Howe Avenue, #4 in Sacramento, CA 95825. *(See Exhibit C-1)*

EXEMPTIONS:

No exemptions claimed. *(See Exhibits C-1 and D-2 through D-3)*

STATUS OF COMPLIANCE:

Reason for Investigation: This investigation was initiated as part of the (b) (7)(E) [REDACTED]
[REDACTED] The investigation was limited to nursing mothers working for Pacific Staffing during the period of investigation.

Prior History: This is the first investigation of Pacific Staffing by the Wage and Hour Division.

Section 207(r)(1)(A) & (B) – Reasonable Break Time & Place, Other than a Bathroom, Shielded from View and Free from Intrusion: Violation found.

The investigation did not disclose any nursing mothers currently employed through Pacific Staffing. *(See Exhibits C-1[reverse])* The employer had an up-to-date FLSA poster with the FLSA Nursing Mother provisions.

When asked about specific nursing mother policies, the employer stated, “We don't have a specific Nursing Mother policy, but we don't and wouldn't limit nursing mother break times (when they are or how long the breaks are).” *(See Exhibit C-1-a)*

However, a review of the employer's handbook disclosed a policy violation. The handbook states, “If a health provider certifies that a reasonable accommodation is medically advisable due to pregnancy, childbirth, or a related medical condition, we will provide a reasonable accommodation by changing the work environment or in the ways things are customarily done so that she is able to perform the essential functions of her job. For example, [...] providing a reasonable amount of break time and use of a room or other location in close proximity to her work area to express milk.” *(See Exhibit D-4-p[reverse])*

When asked about placing a nursing mother associate, the employer stated, “Placing a nursing mother is no different

than placing any other employee; we just make sure the needs of that employee are met. [...] For the clients we work with, unless it's brought up, we don't discuss nursing mother policies. If we had a nursing mother, we'd definitely be proactive about that.” (See Exhibits C-1[reverse] through C-2)

The employer provided a list of 3 employees who went on maternity leave in the period of investigation:

- 1) (b) (6), (b) (7)(C), Associate – Returned to work from maternity leave (b) (6), (b) (7)(C) and was hired to work directly for client (b) (6), (b) (7)(C). (See Exhibits B-1[reverse] and D-3) Per an interview with (b) (6), (b) (7)(C), (b) (6), (b) (7)(C) decided (b) (6), (b) (7)(C) did not want to express milk upon (b) (6), (b) (7)(C) return to work, so (b) (6), (b) (7)(C) did not ask Pacific Staffing or the client for accommodations. (See Exhibit D-2)
- 2) (b) (6), (b) (7)(C), Associate – Took maternity leave (b) (6), (b) (7)(C) and has not returned to Pacific Staffing. (See Exhibits B-1[reverse] and D-3)
- 3) (b) (6), (b) (7)(C), Office Staff – Returned to work from maternity leave (b) (6), (b) (7)(C) and resigned. Returned to work for Pacific Staffing (b) (6), (b) (7)(C) (See Exhibits B-1[reverse] and D-3)

Due to the fact that no nursing mothers were currently employed during the period of investigation, WHI interviewed Office Administrator (b) (6), (b) (7)(C), who returned to Pacific Staffing from maternity leave in May 2013. (See Exhibit B-1) Per (b) (6), (b) (7)(C) informed Pacific Staffing that (b) (6), (b) (7)(C) was nursing, and Pacific Staffing worked with (b) (6), (b) (7)(C) to set up a schedule that would accommodate (b) (6), (b) (7)(C). (See Exhibit B-1[reverse]) (b) (6), (b) (7)(C) was allowed to use the server room, which was free from intrusion, sheltered from view, and had a table, chair, and outlet. (See Exhibit B-1[reverse]) (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) was given sufficient breaks and lengths of time and was allowed to express milk for a little over a year. (See Exhibit B-1[reverse])

DISPOSITION:

On 09/05/2017, a final conference was held at the Sacramento, CA establishment. Present on behalf of the firm was Manager Mr. Jay Jurschak. Present on behalf of the Department was the WHI. Final conference notes were taken. (See Exhibit D-7) WHI discussed the limited nature of the investigation, the investigative findings, and all applicable provisions under the FLSA, including minimum wage, overtime, proper recordkeeping, child labor, and nursing mother provisions.

Regarding the nursing mother policy violation,

WHI explained the violation to the employer as outlined in the Status of Compliance section.

The employer stated the following as reasoning for the violations: “It is a semantics issue. I can see where the wording would create concern. We didn't write the policy; we got it from Silvers HR, and it might be outdated.”

WHI discussed the nursing mother requirements under the FLSA.

The employer agreed to future compliance and stated the following: “We will get into contact with the HR

company immediately and have them change it as soon as this meeting is over.”

The employer agreed to comply with all the provisions of the FLSA. The employer was advised that if violations were found in the future, Civil Money Penalties and/or liquidated damages may be assessed.

The employer was presented with the Enhanced Compliance Agreement (ECA) and requested several days to review the agreement. On 09/06/2017, the employer emailed WHI a signed copy of the ECA. The employer also emailed WHI their revised employee handbook policy. *(See Exhibit D-8)*

The point of contact is Mr. Jay Jurschak at (916) 925-2300. Mail can be sent to the establishment at 855 Howe Avenue, #4 in Sacramento, CA 95825.

Publications:

The following publications were explained and provided to Mr. Jay Jurschak on 09/05/2017: FLSA Poster. Break Time for Nursing Mothers information cards. Fact Sheets #13, 14, 17A, 20, 21, 22, 23, 43, 73.

HRG and Fact Sheets #44, 73, 77A were hand delivered to the establishment prior to the initial conference. HRG and Fact Sheets #28D, 44, 73, 77A were provided and explained to Mr. Jay Jurschak on 07/14/2017 at the initial conference.

Recommendation:

(b) (7)(E)

It is recommended that the case be closed with no further action.

(b) (6), (b) (7)(C)

Wage & Hour Investigator
09/15/2017

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1825973 Originating District: Las Vegas District Office
Local Filing Number: 2017-280-02093 Investigating District: Las Vegas District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 06/23/2017
Assignment Date: 06/23/2017

Employer Information

Trade Name: SLS Las Vegas Legal Name: Las Vegas Resort Holdings, LLC.
Address: 2535 S Las Vegas Blvd EIN: 65-1312126
County: Clark
NAICS Code: 721120
Las Vegas, NV89109 No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 06/14/2017 BNPI:
To: 08/09/2017 Reinvestigation: ☒
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☐
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: 08/18/2017
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSA Totals:	1	1	\$322.62	\$322.62	\$0.00	\$0.00	

WHISARD Compliance Action Report

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	1	Unduplicated Employees Agreed:	1
Total Amount BWs Computed:	\$322.62	Total Amount BWs Agreed:	\$322.62
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

31.5 Hrs. Enterprise Cov. Nature of business- Hotel casino. Nursing Mother not provided with reasonable breaks to express milk. FC on 7/31/17 where ER ATC. Fact Sheets 44, HRG. Fact Sheet 73. It is recommended that case be closed administratively.

WHI Signature: _____ Date: 08/11/2017

Reviewed By: _____ Date: _____

Case File # 1825973

**Las Vegas Resort Holdings, LLC.
Dba: SLS Las Vegas
2535 S. Las Vegas Blvd.
Las Vegas, NV. 89109
Tel. (702) 761-7000**

**Contact :
Vanessa Smith
HR Business Partner
Tel. (702) 761-7511
Fax (702) 761-7528
Vanessa.smith@sllslasvegas.com**

EIN : 65-1312126

NURSING MOTHERS FLSA NARRATIVE REPORT

COVERAGE :

Subject firm operates in Las Vegas, NV. Subject firm is a Hotel Casino that's been in business since 2014. There are no other locations. The company employs about (b) (4) employees.

The firm is owned by StockBridge Real Estate and the officials in charge are : Vanessa Smith (HR

Business Partner); Vince Collura (VP of TableGames) They are in charge of the daily operations and day to day decision making. They are 3 (d) employers.

Sec. 3(s)(A)(1)(ii) : The ADV for the past three years is in excess of \$ 500,000. This information was provided by Ms. Smith. Alcoholic beverages such as Tequila is originated in Mexico, Beer is originated in different states, such as Missouri . The firm has more than two employees who handle food and supplies, all which are originated out of the State of Nevada. Therefore, all employees are subject to Enterprise Coverage.

Sec. 3(s)(A)(1)(i) : Office people handle the internet, phones, mail. Therefore, Individual Coverage was established for office employees.

(b) (6), (b) (7)(C) is a covered nursing employee with a child under the age of 1. Therefore, 7(r) of the FLSA applies.

The period of investigation covers from June 14, 2017 through August 9, 2017 and is limited to the complainant only.

13 (a) (1) is applicable to :

Exemptions were not reviewed. The investigation was limited to (b) (6), (b) (7)(C) who is an hourly employee.

Status of Compliance:

Prior History : A search of WHISARD shows one prior investigation of this firm under this Act.

Case file # 1821803 05/08/17. Violation found for same (b) (6), (b) (7)(C) who was written up and was assessed points for taking an additional 15 minutes to express milk.

MODO : Las Vegas, NV. There are no other locations.

Reason for Investigation : This investigation was initiated (b) (7)(E) (b) (6), (b) (7)(C)

(b) (7)(E) (b) (6), (b) (7)(C) is not provided with additional time to express milk and has been suspended. In addition, (b) (7)(E) (b) (6), (b) (7)(C) the point from prior investigation, case file number 1821803, was never removed. (b) (7)(E) (b) (6), (b) (7)(C). See Disposition Section.

Section 6 : This was a limited investigation. A review of the profile pay period was conducted. No apparent minimum wage violations found.

Section 7: This was a limited investigation. A review of the profile pay period was conducted. No apparent overtime violations found.

Sec. 7 (r)-Nursing Mothers : Violation found. The employer failed to provide complainant with a reasonable amount of time to express milk as frequently as needed. See Disposition Section.

Adequate Space : The employer provided (b) (6), (b) (7)(C) with an adequate space to express milk. The room provided to express milk is shielded from view and free from intrusion from coworkers and the public.

Section 11 : This was a limited investigation. A review of the profile pay period was conducted. No record keeping violations found.

Section 12 : Not applicable. The investigation was limited to (b) (6), (b) (7)(C) who is not a minor.

FMLA Policy Review : FMLA policy review was not conducted with this investigation. Prior FMLA policy was conducted on prior investigation case file number 1821803. The employer was made aware that no FMLA policy review would be conducted with this investigation.

Disposition

On 07/05/17 I held a Conference at the establishment with Vanessa Smith (HR Business Partner) and Rich Danzak (Vice President of HR). Also present was General Counsel, Lou Dorn.

During the Conference I discussed in detail (b) (6), (b) (7)(C) (b) (7)(E) and advised employer that they had agreed to comply in prior investigation that took place in May of 2017 and a month later they are again no longer in compliance. Ms. Smith stated that it was impacting the business and the other dealers by providing (b) (6), (b) (7)(C) the additional time. She stated that this would make dealers go late to their breaks. Dealers are allowed a 20 minute break for every hour they work. Ms. Smith stated that after discussing issue with their attorney they determined that this was not viable and therefore (b) (6), (b) (7)(C) was suspended pending investigation for taking the additional time. During (b) (6), (b) (7)(C) suspension the employer decided that they would only provide an additional 20 minutes for her to express milk and required (b) (6), (b) (7)(C) to sign an agreement where (b) (6), (b) (7)(C) would agree to these conditions. (b) (6), (b) (7)(C) would not be able to take more than 20 minutes if needed. The employer also stated that (b) (6), (b) (7)(C) was brought back to work and that they would compensate (b) (6), (b) (7)(C) for the days that (b) (6), (b) (7)(C) was suspended.

I advised employer that (b) (6), (b) (7)(C) has to be provided with reasonable amount of time to express milk when needed and that (b) (6), (b) (7)(C) should not be subject to any limitations of time. I advised that if (b) (6), (b) (7)(C) needed to express milk before (b) (6), (b) (7)(C) break, (b) (6), (b) (7)(C) had to be allowed this time. They stated that since (b) (6), (b) (7)(C) is a dealer, (b) (6), (b) (7)(C) is provided with a 20 minute break every hour and they could not extend it because it would cause an impact and problems with the other dealers that are backing (b) (6), (b) (7)(C) up. I explained that regardless of this, the nursing mothers have to be allowed to express milk as frequently as needed and that the duration of each break will vary. I provided them with fact sheet 73 and explained the break time requirements for nursing mothers. I also advised employer the point assessed on May 5th had to be removed as they were informed in the prior investigation. They stated that (b) (6), (b) (7)(C) was assessed a point for leaving early and according to their policy they can do this. I explained that (b) (6), (b) (7)(C) left early, because (b) (6), (b) (7)(C) was not allowed the additional time to express milk and (b) (6), (b) (7)(C) was in pain so (b) (6), (b) (7)(C) decided to leave early. Therefore, the point had to be removed.

Furthermore, during the course of the investigation, (b) (6), (b) (7)(C) (b) (7)(E) prior to (b) (6), (b) (7)(C) suspension (b) (6), (b) (7)(C) was given 1-2 days a week as a supervisor and the schedule for the next 2 weeks did not have (b) (6), (b) (7)(C) as a supervisor. Ms. Smith stated that (b) (6), (b) (7)(C) has duo rate and is put as a supervisor as needed. I requested 3 months of (b) (6), (b) (7)(C) schedule prior to (b) (6), (b) (7)(C) suspension to verify that (b) (6), (b) (7)(C) is being provided with similar schedule. Ms. Smith stated that she would gather the information and scan it to me.

I advised employer that since this is a second investigation and they had agreed to comply in the first investigation, but failed to do so I needed in writing on how they were going to comply. I also informed them that there was a possibility of CMP's being assessed. General Counsel stated before they agreed to comply they wanted for me to provide them in writing, how I wanted them to comply. I explained that we do not provide anything in writing and the reason for the conference was to inform them of violations and remedies needed for compliance. General Counsel stated they would not agree to comply not till they had in writing how they needed to comply. I advised that I would let my supervisor know and would get back to them regarding this matter.

On July 31, 2017, I held a meeting with General Counsel, Lou Dorn and Vice President of HR, Rich Danzak. Also present was ADD Gene Ramos. During the meeting the following was discussed :

Point from May 5th was not removed and employer had agreed to remove point during the prior investigation. Mr. Danzak stated that this point had already been removed. HR Vanessa Smith was confused with another point that had been assessed that had nothing to do with (b) (6), (b) (7)(C) expressing milk.

The employer paid (b) (6), (b) (7)(C) 40 hours for the time (b) (6), (b) (7)(C) was suspended. However, (b) (6), (b) (7)(C) suspension started on the 18th. (b) (6), (b) (7)(C) had worked like 3 hours and was not compensated for 4.5 of (b) (6), (b) (7)(C) remaining shift. Mr. Danzak stated they would check (b) (6), (b) (7)(C) schedule and if this was the case they would pay her for these missing hours.

(b) (6), (b) (7)(C) (b) (7)(E) after (b) (6), (b) (7)(C) suspension, (b) (6), (b) (7)(C) was offered less days as a supervisor vs. a dealer. Mr. Danzak stated they have a new table supervisor who is very flexible and he will ensure that (b) (6), (b) (7)(C) is not treated differently with respect to this matter.

Regarding DOL giving them in writing how they needed to comply, ADD Gene Ramos advised we do not provide anything in writing. However, we provide them with information such as fact sheets and regulations on how they need to comply.

Mr. Dorn stated that when I requested in writing how the employer was going to comply, he was under the impression that I wanted them to sign a compliance agreement. I advised him that a letter or an email would be sufficient. He explained they did not have a problem with providing this in the next few days.

On August 9, 2017 Mr. Dorn sent an email as affirmation of SLS's commitment to comply with FLSA regarding nursing mothers. See ex. D- 6. SLS agreed to comply by :

Not limiting (b) (6), (b) (7)(C) breaks to express milk, but will ask (b) (6), (b) (7)(C) to work through some of (b) (6), (b) (7)(C) rotation breaks when (b) (6), (b) (7)(C) does not need to express milk, but (b) (6), (b) (7)(C) will still have 2 hours of paid breaks during an 8 hour shift.

They will accommodate (b) (6), (b) (7)(C) to express breast milk as quickly as coverage or game closure can be managed which generally occurs within 5-10 minutes.

They will ensure that (b) (6), (b) (7)(C) is not treated differently with respect to the allocation of supervisor shifts. They will audit (b) (6), (b) (7)(C) schedule to ensure (b) (6), (b) (7)(C) has the same opportunity to work both dealer shifts and supervisor shifts as team members who are similarly situated with regard to availability, skill set and daily business volume.

SLS has removed from (b) (6), (b) (7)(C) file all discipline and points for attendance related to breaks for the purpose of expressing milk.

(b) (6), (b) (7)(C) will be paid 4.5 hours of wages on (b) (6), (b) (7)(C) next pay check.

(b) (6), (b) (7)(C) **Notification :** (b) (6), (b) (7)(C) was apprised of the results of the investigation via phone on 08/11/17. (b) (6), (b) (7)(C) requested punitive damages. (b) (6), (b) (7)(C) was made aware that damages were not assessed and was advised of (b) (6), (b) (7)(C) 16 (b) rights.

Recommendation :

I recommend case be closed administratively.

Publications : The employer was provided with HRG, Fact Sheet 44, 73.

(b) (6), (b) (7)(C)

Wage & Hour Investigator
08/11/17.

WHISARD Compliance Action Report

U.S. Department of Labor Wage and Hour Division

Case ID: 1826997 Originating District: Phoenix District Office
Local Filing Number: 2017-279-10865 Investigating District: Phoenix District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 07/06/2017
Assignment Date: 07/06/2017

Employer Information

Trade Name: US Renal Care Legal Name:
Address: 1457 W. Southern Ave EIN: 62-1826478
County: Maricopa
NAICS Code: 621492
Mesa, AZ 85202 No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 08/03/2016 BNPI:
To: 08/02/2017 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☐
Compliance Status: Compliance (no violations found) Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

7.75 hours. No violations found. Pubs provided HRG, FS 44, 77a, 73.

WHI Signature: _____ Date: 08/07/2017

Reviewed By: _____ Date: _____

US Renal Care , Inc.
dba: US Renal Care
1457 W. Southern Ave
Mesa, AZ. 85202
(480) 894-5411
EIN: 62-1826478
Case ID: 1826997

Point of Contact: Julie Marie
Regional Human Resources Director
jmarie@USRENALCARE.com
Office: (404) 747-7862
5851 Legacy Circle. Suite 900
Plano, TX 75024

FLSANM Narrative

COVERAGE:

Subject firm is a dialysis clinic. The subject firm was acquired on 01/01/2016 according to the HR Director (exhibit-D4), The corporate headquarters is located at 5851 Legacy Circle. Suite 900 Plano, TX 75024 (Exhibit C14).

Ms. Julie Marie the HR Regional Director and Ms. Corina King Area director provided the following information on August 2nd, 2017. Ms. Marie stated that the company has grossed over \$500,000 for the past three years and employees regularly handle goods from out of state (Exhibit C13). Enterprise Coverage under section 203(s) (1)(a) of the Act is applicable for this company.

Ms. Marie states they are currently without a manager at the facility.

According to (b) (6), (b) (7)(C) was (b) (6), (b) (7)(C) manager and supervisor (b) (6), (b) (7)(C). However (b) (6), (b) (7)(C) was sick often and so was rarely present. (b) (6), (b) (7)(C) often reported to the “charge nurse” when (b) (6), (b) (7)(C) would leave the floor for lactation purposes. When the manager was out, whoever was the “charge nurse” would be the supervisor.

This investigation is limited to FLSA Section 207(r) “Break Time for Nursing Mothers: during the period April 1st, 2017-August 2nd, 2017.

Exemptions:

Not applicable. (b) (6), (b) (7)(C) is a non-exempt employee paid on an hourly basis and is therefore subject to Section 7 of the FLSA and the protections of the Break Time for Nursing Mothers provision of the FLSA (Exhibit C-1).

Status of Compliance

Prior History: 2 Prior investigations. Case ID: 1484311 (b) (7)(E) FMLA violation (b) (7)(E) (exhibit-D19). Case ID: 1700747 (b) (7)(E) FMLA violations was ER denial of leave, EE worked through (b) (6), (b) (7)(C) PTO and was uncompensated. Back wages ATP \$1,528.85 (exhibit-D24).

MODO: Dallas TX District Office is the Main Office District Office. Spell Capital is headquartered at 5851 Legacy Circle. Suite 900 Plano, TX 75024. No MODO directions.

Reason for the investigation: (b) (6), (b) (7)(C) (b) (7)(E) a violation of the Patient Protection and Affordable Care Act amendment to the FLSA (Break Time for Nursing Mothers). (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) has been a certified Renal Dialysis Technician (b) (6), (b) (7)(C). (b) (7)(E) (b) (6), (b) (7)(C) was being written up for abusing (b) (6), (b) (7)(C) lactation time. (b) (7)(E) (b) (6), (b) (7)(C) needed more time than the company break policy allowed. (b) (6), (b) (7)(E) (b) (6), (b) (7)(C) was written up for it and that it may have affected (b) (6), (b) (7)(C) raise.

(b) (7)(E) The company's policy provides a total of an hour break. 30 minutes is to be used as an unpaid lunch break, and the other 30 minutes can be used as two 15 minute paid breaks. (b) (6), (b) (7)(C) failed to clock out after (b) (6), (b) (7)(C) 15 minute breaks were up whilst using them for lactation purposes.

Timeline:

- (b) (6), (b) (7)(C) took maternity leave (b) (6), (b) (7)(C) (specifies (b) (6), (b) (7)(C) cannot remember the exact dates).
- (b) (6), (b) (7)(C) returned to work.
- (b) (6), (b) (7)(C) complained to HR Director Marie about inadequate nursing room privacy, Ms. Marie changed the location of the nursing room upon notice of this.
- In February (b) (6), (b) (7)(C) was written up for failing to clock out for break time that exceeded establishment's break policy.
- In February, (b) (6), (b) (7)(C) (b) (7)(E) (b) (6), (b) (7)(C) ceased to continue (b) (6), (b) (7)(C) lactation breaks due to being written up.

Section 7(R)(1)(A)-Reasonable Break Time: No violations found.

Section 7(R)(1)(B)-A Place, Other than a Bathroom, Shielded from View and Free from Intrusion:
No violation found.

Disposition

On August 2nd, 2017 WHI (b) (6), (b) (7)(C) and WHI (b) (6), (b) (7)(C) met with the HR and Area Directors Julie Marie and Corinna King for an initial conference to discuss the Section 7 of the FLSA and the protections of the Break Time for Nursing Mothers provision of the FLSA and to tour the establishment.

WHI (b) (6), (b) (7)(C) explained the provisions of the act that included the Section 7(R) (1) (A) and (B) requirements that the DOL enforces.

Ms. Marie stated that US Renal Care had no specific nursing mothers' policy, but, that they followed the FLSA guidelines. She alleges that she was in charge of arranging an appropriate room in the establishment for the nursing mother as per regulations.

Ms. Marie had provided documents that pertained to (b) (6), (b) (7)(C) evaluations and reviews. (b) (6), (b) (7)(C) was written up for failing to clock out during breaks that went past company break policy. In addition, reviews state (b) (6), (b) (7)(C) need to improve (b) (6), (b) (7)(C) attendance (exhibit-D7-18).

WHI (b) (6), (b) (7)(C) viewed the room provided for (b) (6), (b) (7)(C), it was a private room with a lock that was appropriately shielded and free from intrusion.

After discussing the requirements, the firm's current procedures, and touring the establishment; WHI (b) (6), (b) (7)(C) concluded that the firm's practices were compliant to requirements. On August 4th, 2017 WHI (b) (6), (b) (7)(C) called HR Director Marie to inform her of the findings.

Recommendations

(b) (7)(E) recommend this case be administratively closed.

(b) (6), (b) (7)(C) Notification

Final attempt to contact (b) (6), (b) (7)(C) was made on 08/2015/2017 to inform (b) (6), (b) (7)(C) of case findings. No contact has been made.

Publications

The following publications were discussed and provided: Handy Reference Guide, Fact Sheet #44, 73 and 77A.

(b) (6), (b) (7)(C)

Wage and Hour Investigator
08/17/2017

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1827503 Originating District: Sacramento District Office
Local Filing Number: 2017-302-07651 Investigating District: Sacramento District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 07/12/2017
Assignment Date: 07/17/2017

Employer Information

Trade Name: Life Time Legal Name: Life Time, Inc.
Address: 1435 E. Roseville Parkway EIN: 41-1689746
County: Placer
NAICS Code: 71394
Roseville, CA95661 No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 07/19/2015 BNPI:
To: 07/18/2017 Reinvestigation: ☒
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

FMLA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FMLA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

(b) (7)(E) . FLSANM. Enterprise Cov Section 203(s)(1)(A)- ADV>500K & EEs engaged in interstate commerce. MODO: Minneapolis DO. EX: not tested. Hx: expensive priors under FLSA. Violation: 207(r)(1)(B) - not providing a place shield from view and intrusion. ER complied immediately after IC. FC on 10/11/17 with General Manager and General Counsel. ER ATC with provision and FLSA. (b) (6), (b) (7)(C) notified on 10/12/17. Rec case close no action. Pubs: see narrative.

WHI Signature: _____ Date: 10/24/2017

Reviewed By: _____ Date: _____

Fair Labor Standards Act (FLSA) Narrative

Life Time, Inc.

DBA: Life Time

1435 E. Roseville Parkway

Roseville, CA 95661

Phone: 916-472-2000

FID: 41-1689746

Case ID: 1827503

Case File: 2017-302-07651

Local Contact:

Rob Chemaly – General Manager

Phone: 916-472-2067

Email: RChemaly@lt.life

Email: RChemaly@lifetimefitness.com

Corporate Office Contact:

Jessie Mischke – Corporate Counsel

Life Time, Inc.

2902 Corporate Place

Chanhassen, MN 55317

Phone: 952-401-2640

Fax: 866-499-1651

Email: JMischke@lifetimefitness.com

Email: JMischke@lt.life

COVERAGE

The subject Life Time, Inc. doing business as (dba) Life Time. Life Time is a fitness center with cardio/weight machines, personal trainers, cardio classes, basketball, tennis and racquetball courts, run/cycle, swim, rock climbing, soccer groups/teams, a children center, café, and full spa (Exhibit C-1). The business started selling memberships on January 5, 2015 and opened its location on May 8, 2015. This location: 1435 E. Roseville Parkway, Roseville, CA 95661 is one of about 125 centers for the firm (Exhibit C-1). It employs approximately (b) (4) employees. The corporate office is located at 2909 Corporate Place, Chanhassen, MS 55317 (Exhibit C-1).

The firm is a corporation, incorporated in the State of Minnesota on November 5, 2002 (Exhibit C-9). The officers for the business are Bahram Akradi – Chairman and Chief Executive Officer, Thomas Bergmann

– President and Chief Financial Officer, Eric Buss – Executive Vice President, Jessica DePetro – Vice President, Controller, and Treasurer, Steven Kerzman – Director of Tax and Revenue and Assistant Treasurer, Erik Lindseth – Senior Vice President and General Counsel, Chris Ryan – Senior Associate General Counsel and Assistant Secretary, James Spolar – Vice President, Deputy General Counsel and Secretary, Kari L. Broyles – Vice President, Senior Associate General Counsel and Assistant Secretary, Michael Burgess – President of Sales & Marketing and Chief Digital Officer, Jess Elmquist – Executive Vice President of Human Resources and Life Time University, Parham Javaheri – Senior President and Real Estate and Development, Stephen Rowland – Executive Vice President of Construction and Development and Jeff Zwiefel – Executive Vice President and Chief Operating Officer (Exhibit C-4). The business was previously known as Life Time Fitness, Inc. and changed their name in July 2017 (Exhibit C-2, C-4).

Life Time meets enterprise coverage under 203(s)(1)(A). It exceed \$500,000 a year and has two or more employees engaged in interstate commerce, producing goods for interstate commerce, or handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce. The annual dollar volume for 2014 was (b) (4) (Exhibit C-5A); 2015 was (b) (4) (Exhibit C-6A); 2016 (b) (4) (Exhibit C-8D) and for 2017 (ending June) was (b) (4) (Exhibit C-7J).

Life Time is part of a larger enterprise 100% owned and operated by LTF Intermediate Holdings, Inc., a Delaware corporation (Exhibit 4). Life Time, Inc. shares related activities, a common business purpose, unified operation and/or common control found in §779.201 through §779.235 with their subsidiaries LTF Club Management Company, LLC and LTF Operations Holdings, Inc. and parent company LTF Intermediate Holdings, Inc. LTF Club Management Company is the entity that employs Life Time's club employees (Exhibit C-4). The officers for LTF Club Management Company, LLC are as follows: Bahram Akradi – Chairman and Chief Executive Director, Thomas Bergmann – President and Chief Financial Officer, Eric Buss – Executive, Jessica DePetro – Vice President, Controller and Treasurer, Steve Kerzman- Director of Tax and Revenue and Assistant Treasurer, Erik Lindseth – Senior Vice President and General Counsel, Chris Ryan – Senior Associate General Counsel and Assistant Secretary and James Spolar – Vice President, Deputy General Counsel and Secretary (Exhibit C-4).

3(d) Employer(s): The 3(d) employers for the business are the company officers for LTF Intermediate

Holdings and LTF Club Management Company, LLC. The officers implement and set policy for the company. In addition, Rob Chemaly – General Manager runs the business on a day-to-day basis (Exhibit C-1, C-4).

Period of Investigation

July 19, 2015 to July 18, 2017. The case was limited to the nursing mother's provision, child labor and a cursory review of FLSA.

Main Office District Office (MODO)

The Minneapolis District Office is the MODO for the company. (b) (7)(E) and stated no special instructions. (b) (7)(E) (Exhibit D-1).

EXEMPTIONS

The company claimed (b) (4) exempt employees. The exemptions were not tested, but the employer was provided guidance on 541. Based on records and interviews, exempt employees receive a salary of at least \$455 per week, they are Department Managers, they supervise two or more full time employees and have the authority/ recommendation to hire/ fire (Exhibit C-1, B-1 through B-8, D-4, D-7, D-8, D-9)

STATUS OF COMPLIANCE

Reason for Investigation

This case was initiated by (b) (7)(E) co-workers that did not have a private space to express milk. (b) (7)(E) The investigation was expanded to look at all the provisions of the FLSA. (b) (7)(E) regarding the lack of a private space (b) (7)(E). Once the employer was provided information on the nursing mother's provision, the employer quickly came into compliance. No violations were found under Minimum Wage, Record Keeping, and Child Labor.

Prior History

A search in the WHISARD database found 34 prior actions. Below please find the last investigation found in WHISARD (Exhibit D-2).

- FMLA – Case ID: 1747866

Section 206 MW –No violation found

No violation. Based on a review of payroll and time records, employee and employer interviews, all the workers were paid at least the federal minimum wage of \$7.25 per hour. The lowest hourly rate an employee received was (b) (4) per hour (Exhibit B-1 through B-8, C-1, D-4).

Section 207 Overtime – Violation Found

Based on a review of payroll and time records, employee and employer interviews, all workers received time and a half for their regular rate for all hours over 40 in a work week. (Exhibit B-1 through B-8, C-1, D-7, D-8)

Section 207(r)(1)(A) - Reasonable break time – No Violation

The employer's policy states, "Life Time will provide a reasonable amount of break time to accommodate a Team Member desiring to express breast milk for the Team Member's infant child" (Exhibit D-6L). The investigation revealed that the employer allowed as much time needed and when needed to express milk (Exhibit C-1, B-2, B-3, B-5).

Section 207(r)(1)(B) – A place Shield from View and Free from Intrusion – Violation

The employer's policy states, "Life Time will make reasonable efforts to provide Team Members with the use of a room or location other than a toilet stall for the Team Member to express milk in private" (Exhibit D-6L). At the time (b) (7)(E) the employer had a taken a shade down in a manager's office and informed staff that they can express milk in a changing stall and in one of the spa rooms. Employee interviews showed that mothers who needed to express milk still used the manager's office regardless of the window being covered. (Exhibit B-2, B-3, B-5, C-1)

On WHI's site tour of the establishment the nursing mother locations were viewed. It was determined that the changing stall was not a permissible space as it was connected to bathrooms. The spa rooms were not functional because there was no place for a mother to put her things down on a table (aside from the massage table). The issue of cleanliness was discussed with the general manager regarding the changing stall and spa room. It was suggested to the general manager to cover up the window in the manager's office. WHI also discussed the availability of the spa rooms and that an appropriate space needs to be

made available when the mother needs to express milk. WHI informed the employer that having an adequate space to express milk is important because of milk production and a mother's way of feeding her baby (Exhibit E-1).

Section 211 Record Keeping (RK) – No violation found

The employer's records are maintained at the corporate office. The employer maintained the required items listed in 516.20. In addition, the employer had the poster displayed in an employee breakroom (Exhibit D-4, D-5, D-7, D-8)

Section 212 Child Labor (CL) – No violation found

Life Time has approximately 52 minors employed during the period of investigation. Most minors were 16 or 17 years old at the time of hire. Minors had positions as lifeguards, in Kids Academy, and in the Cafe. WHI interviewed minors, reviewed date of births and schedules and also conducted a site tour. No child labor violations were substantiated (Exhibit C-1, B-1 through B-8, D-4, D-5, D-7, D-8, D-9).

DISPOSITION

On October 11, 2017 a final conference was held at the employer's establishment located at 1435 E Roseville Parkway, Roseville, CA 95661 with Rob Chemaly – General Manager, Jesse Mischke – Corporate Counsel (via telephone) and the lead WHI. The WHI informed the employer of the period of investigation and scope of investigation. WHI discussed the applicable law in which coverage was established. WHI reviewed the following topics: hours worked, travel time, meeting/training time, exemptions, regular rate along with the provisions of the Act; Minimum Wage, Overtime, Nursing Mothers, Record Keeping, and Child Labor. The employer agreed to comply with the FLSA.

With regard to the violation and future compliance:

Section 207(r)(1)(B): The WHI explained to the employer that a violation of the nursing mothers provision was found because the changing stall and spa room was not a functional space to express milk and that the manager's office was not a private space due to the window not being covered. The employer stated that the shade that was previously up in the manager's office was taken down because it was believed that the changing stall and spa room were more private than the manager's office. The employer stated that once WHI came, he immediately put up a shade in the manager's office again and brought a small table for mothers to use in the spa room (Exhibit E-1, E-2C). The employer understood that the

changing stall in the locker room was not permissible due to being connected to bathrooms. The employer further stated that he frosted the window in the manager's office and designated that office as the first location to express milk for mothers (Exhibit E-2). He said that the spa rooms were additional spaces a mother can use if the manager's office was occupied. WHI also discussed reviewing their current lactation policy to incorporate language from the regulations. WHI provided the HRG and Fact Sheet 73 for guidance.

The employer was informed that there is a potential for civil money penalties to be assessed once a manager has reviewed the file.

(b) (6), (b) (7)(C) Notification: (b) (6), (b) (7)(C) was notified on October 12, 2017 via telephone of the results of the investigation.

Publications: The following publications were provided: HRG, WH-1506, WH-1312, WH-1330, WH-1262, Regs 516, 825, Fact Sheets: 17A, 17G, 21, 22, 23, 28D, 44, 73, 77A

Recommendation: I recommended that this file be closed administrately with no further action.

Date: October 12, 2017

(b) (6), (b) (7)(C)
Wage and Hour Investigator
Sacramento District Office

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1828088 Originating District: Seattle District Office
Local Filing Number: 2017-323-08249 Investigating District: Seattle District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 07/19/2017
Assignment Date: 07/19/2017

Employer Information

Trade Name: Peoples Bank of Washington
Address: 5600 24th Ave NW

Seattle, WA 98107

Legal Name: Peoples Bank
EIN: 91-0362750
County: King
NAICS Code: 522110
No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 08/01/2016 BNPI:
To: 09/30/2016 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

FLSANM case. ER cov 3s1a. 50+ ees, EE not Sec 7 exempt. EE cov by NM provision. Viol: ER did not provide adequate space and requested EE to express milk in bank vault. FC with Michelle Bennett and Christine Lewis on 10/27/17. ATC. Pubs Prov: HRG, FS 44, 73

WHI Signature: _____ Date: 10/27/2017

Reviewed By: _____ Date: _____

People's Bank of Washington
5600 24th Ave NW
Seattle, WA 98107
Contact: Christine Lewis, HR
(360) 715-4249
EIN: 91-0362750
Case ID: 1828088

Fair Labor Standards Act Nursing Mothers

This investigation was initiated (b) (7)(E) (b) (6), (b) (7)(C) (b) (7)(E) the employer had not provided a space in order for (b) (6), (b) (7)(C) to express milk during (b) (6), (b) (7)(C) work day and harassed (b) (6), (b) (7)(C) about expressing milk at work. (b) (6), (b) (7)(C) also (b) (7)(E) (b) (6), (b) (7)(C) was fired because (b) (6), (b) (7)(C) was asserting (b) (6), (b) (7)(C) right under the Nursing Mothers provision. (b) (7)(E) the employer agreed to future compliance. The investigation was limited to the Nursing Mothers provision of Section 7 under the FLSA.

Prior Investigative History

There have been no prior investigations of this establishment.

MODO

The location under investigation is located in Seattle, WA, but the headquarters is in Bellingham, WA. It is a multi-unit employer with locations all over Western Washington. Seattle DO is the MODO. (b) (6), (b) (7)(C)

(See D-1)

Coverage

People's Bank of Washington is a locally owned bank with 25 locations throughout Western Washington. As a bank, most employees are engaged in interstate commerce on a regular and recurring basis because they handle monetary transactions and paperwork that cross state lines. Other employees, such as janitors, that are not directly engaged are performing work that is closely related and directly essential to the

covered work. The company grosses well over \$500,000 per year and has (b) (4) of employees engaged in interstate commerce. (See Ex C-2a) All employees are covered under §3(s)(1)(a) of the FLSA on an enterprise basis. Since there are more than 50 employees, the coverage includes §207(r); the nursing mothers provision of the FLSA. (See Ex C-1a)

The current investigation is limited to §207(r) of the FLSA and (b) (6), (b) (7)(C) in question is a non-exempt employee covered by §207(r).

The present investigation covers the period August 1, 2016 through September 30, 2016.

Exemptions

None applicable.

Status of Compliance

207(r)(1)(A) – Failure to provide adequate break time (frequency, duration, or complete denial):

No violations found. (b) (6), (b) (7)(C) was given adequate break time to express (b) (6), (b) (7)(C) breast milk. (See Ex B-1, 2) (b) (6), (b) (7)(C) (b) (7)(E) was harassed by (b) (6), (b) (7)(C) manager and made to take breaks to close together at times which caused (b) (6), (b) (7)(C) to express more milk than necessary and required longer time needed to finish pumping. The regulations do not require that employers change employees' shifts in order to accommodate their pumping schedule; the regulations only encourage employers work with the employee when needed.

207(r)(1)(B)- Failure to provide functional space (bathroom not permissible, space not free from intrusion, not shielded from view): Violation found. (b) (6), (b) (7)(C) did not always have a private space where (b) (6), (b) (7)(C) could express (b) (6), (b) (7)(C) milk free from intrusion. According to current branch management as well as human resources, the employee break room should be the designated room for this location as it is the only room that is private and free from intrusion. (See Ex C-2a) Originally, (b) (6), (b) (7)(C) was told (b) (6), (b) (7)(C) could use the break room for expressing milk. (See Ex B-2a) There were some issues with this as the manager did not want to inconvenience other employees that would need to access the break room. (See Ex D-2) Because of this, the manager wanted (b) (6), (b) (7)(C) to stick to a strict break schedule that (b) (6), (b) (7)(C) wanted posted for all of the employees to see. (See Exs B-1b, 2a) The schedule was not always easy to stick to because of customer demands. This caused some issues between the manager and employee.

The main issue is that on Saturdays, the bank only has two employees and they are not allowed to leave each other alone. (See Exs B-1a, 2a, C- 1a) (b) (6), (b) (7)(C) states that (b) (6), (b) (7)(C) manager had wanted (b) (6), (b) (7)(C) to use the vault room with the door open because it was in the front of the bank and (b) (6), (b) (7)(C) would be available if something happened. (See Ex B-2a) WHI (b) (6), (b) (7)(C) took a tour of the facilities and verified that the vault would not be a viable option. It would be open to view by both customers and employee and there is a camera in there that cannot be turned off. The break room is situated in the back, offers much more privacy, does not have cameras, and has a monitor that shows the activity going on in the bank. The human resource manager also confirmed it would be the best spot to use, even on Saturdays, because it locks, the employee expressing milk can see the bank floor, and it has an outside line in the event the police needed to be called. (b) (6), (b) (7)(C) stated the vault would not be an option. (See Ex C- 1b)

The manager also admitted that she considered the vault an option and said that the employee could use because there was a space behind the door that the camera did not reach. (See Ex B-2) She stated the break room was in the back and not suitable to use on a Saturday. (See Ex B-2) Telling the employee to use the vault to express milk was a violation.

The only other location that the employer was trying to use to accommodate the employee was an office that did not have glass walls, but did have a glass door. They purchased a screen for the employee to use, but the door did not lock, the employee stated that the screen was not sufficient to offer privacy and she was not comfortable using it. (See Ex B- 1b, 2a) The employee requested some kind of covering that would cover the glass entirely, but that was denied.

There is evidence that another former employee that needed space used the bathroom to express milk. (See Exs B-1a, 2a) On the initial tour, the current manager also showed WHI (b) (6), (b) (7)(C) the bathroom as one of the options available. The employer has shown that they are aware of the law stating that a bathroom is not an adequate space for nursing mothers to use, but the local management is not as knowledgeable about the rules.

207(r)(2) – Compensation for break time: No violations found. The employer paid (b) (6), (b) (7)(C) for all time expressing milk. (See Ex B-2)

207(r)(3) – Undue Hardship: No violations. The employer has many employees at or near the location where the employee works and made no objection to its obligation to comply with the law.

Retaliation: (b) (6), (b) (7)(C) (b) (7)(E) the employer terminated (b) (6), (b) (7)(C) for asserting (b) (6), (b) (7)(C) rights. There was no evidence to suggest that the termination was retaliatory. The employer provided documents to show the employee violated company policy. (b) (6), (b) (7)(C) was termed for completing a transaction for a domestic partner. (b) (6), (b) (7)(C) admitted to doing the transaction, but was not truthful about (b) (6), (b) (7)(C) relationship with the person (b) (6), (b) (7)(C) did it for. Since (b) (6), (b) (7)(C) admitted to WHI (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) had done the transaction and the employer provided evidence that the action violated their policy and provided evidence that the person shared an address for (b) (6), (b) (7)(C) there is no evidence that the termination was retaliatory.

Disposition

WHI (b) (6), (b) (7)(C) conducted a final conference via telephone with Michelle Barrett and Christine Lewis on 10/27/2017. WHI (b) (6), (b) (7)(C) explained coverage and the requirements under the law. The parties agreed that the company worked well to accommodate this employee and something happened on a local level between the employee and the manager. Once the manager wanted the employee to use the vault, whether to remain in compliance with safety rules or not, the violation occurred at that time. Ms. Barrett had already provided a copy of their formal Nursing Mothers policy. She suggested that to be in future compliance and avoid this scenario from happening again, she would add in language in the policy that the vault was off limits as well as the restroom. Ms. Barrett also assured future compliance by allowing blinds or shades to be added to offices in locations where the break room is too inconvenient and there is an office available. That was not allowed with Ms. Stewart. The formal policy would be included with all managers and sent out to employees as part of their return to work counseling.

(b) (6), (b) (7)(C) notified on October 27, 2017.

Publications Provided

Fact sheets 44, 73, HRG

Recommendation

Recommend close administratively (b) (7)(E).

Further Correspondence

Christine Lewis
Human Resource Manager
3100 Woburn St
Bellingham, WA 98226
(360) 715-4249

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1828396 Originating District: Sacramento District Office
Local Filing Number: 2017-302-07660 Investigating District: Sacramento District Office
WHMIS Case Number: Lead Investigator: (b) (7)(C), (b) (6)
Registration Date: 07/21/2017
Assignment Date: 07/21/2017

Employer Information

Trade Name: Performance First Legal Name: Performance First Building Services, Inc.
Address: 2275 Capitol Ave EIN: 20-8576599
2800 L St County: Sacramento
Sacramento, CA 95816 NAICS Code: 561720
No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 08/10/2015 BNPI: 0
To: 08/09/2017 Reinvestigation: ☒
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

Total Violations Under FLSA: 1 \$0.00

WHISARD Compliance Action Report

FLSNM

Violation / Compliance Status	Violations	EES ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

(b) (7)(E) FLSA&NM limited to Sutter locatn. 1 prior @ diff loctn. COV: 3(s)(1)(A); ADV>\$500k/yr & EES hndle gds in intrste comrce. EX: Applic. SOC: Sec7: FT calc RR correct; no BWs. Sec11: FTK accur rec of OT prem, RR, weekly HW. No NM vios. DISP: FC w/ ER Al Cuevas & Site Suprvsr Danny Williams @ Sutter site 09/07/17. ATFC. Signed ECA. Pubs: See narrative.

WHI Signature: _____ Date: 09/18/2017

Reviewed By: _____ Date: _____

**Performance First Building Services, Inc.
dba Performance First
EIN: 20-8576599**

2275 Capitol Avenue & 2800 L. Street
Sacramento, CA 95816
Mr. Alvaro Cuevas
(408) 210-1013 (cell)

**Case ID #1828396
Case File #2017-302-07660**

Point of Contact:
Mr. Alvaro "Al" Cuevas, President
807 Aldo Avenue, Suite 110
Santa Clara, CA 95054
(408) 210-1013 (cell)

Fair Labor Standards Act (FLSA) Narrative

COVERAGE:

Performance First Building Services, Inc. dba Performance First opened and incorporated in California in August 2006. *(See Exhibits C-1 and C-3)* The firm is owned by CEO Ms. Elena Cuevas (b) (4), her husband President Mr. Alvaro Cuevas (b) (4), Ms. Teodora Pacheco (b) (4), Ms. Evette Cornejo (b) (4), and Mr. Josue Garcia (b) (4). *(See Exhibits C-1 and C-2)* Performance First functions as a contractor that provides janitorial services to clients throughout Northern California. *(See Exhibit C-1)* There are approximately (b) (4) employees working for the enterprise and (b) (4) working at the two subject Sutter Health locations in Sacramento, CA. *(See Exhibits C-1 and D-2 through D-3)* Manager Mr. Danny Williams meets the definition of an employer under Section 203(d) of the Fair Labor Standards Act (FLSA) because he oversees, schedules, and hires and fires employees. *(See Exhibits B-1, B-2, B-3, B-4, B-5[reverse], and C-1-a)*

The gross sales (annual dollar volume) of the enterprise are as follows: 2014 - (b) (4); 2015 - (b) (4); 2016 - (b) (4). *(See Exhibits C-1 and C-7)* Employees regularly handle goods that have traveled in interstate commerce, such as Pepsi from New York, Medline Smartguard Gloves from Illinois, and Purell Hand Sanitizer from Ohio. *(See Exhibit C-6)* As such, enterprise coverage under Section 203(s)(1)(A) of the FLSA applies for the period of investigation.

Mapping: Performance First provides janitorial services to clients across Northern California. *(See Exhibit C-1)* Per Mr. Cuevas, Performance First has only one contract with Sutter Hospital at the two Sacramento, CA locations (2275 Capitol Avenue and 2800 L. Street in Sacramento, CA 95816). *(See Exhibits C-1)* The contract was signed

July 2016 and employees started on the contract August 2016. *(See Exhibits C-1 and D-6)* Performance First does not use a staffing agency or subcontractors to perform the janitorial work at the Sutter Hospital sites. *(See Exhibits C-1 and D-2)*

Period of Investigation: 08/10/2015 to 08/09/2017. Work at the Sutter Health sites started in August 2016.

MODO: San Francisco, CA District Office. No MODO record required as the firm is not part of a multiunit enterprise. The firm's headquarters and office is at 807 Aldo Avenue, Suite 110 in Santa Clara, CA. The firm has no permanent office in Sacramento, CA. *(See Exhibit C-1)* (b) (7)(E)

(See Exhibit D-10) (b) (7)(E)

(See Exhibit D-10)

Joint Employment:

An analysis of the factors set forth in 29 CFR 500.20(h)(5)(iv)(A) through (G) and 29 CFR 791 determined that a joint employment relationship **does not** exist between Performance First and Sutter Health.

The following joint employment factors were met: **D and E.**

A. Factor Not Met – **The power to either alone or through control of the employer to direct, control or supervise the workers.** Performance First directs, controls, and supervises its own staff at the Sutter Health sites. *(See Exhibits B-5-a and C-1-b)* Per Mr. Cuevas, Performance First's on-site supervisor performs these functions and also checks for work quality. *(See Exhibits B-5-a and C-1-b)* Sutter Health does not direct, control, or supervise Performance First staff. *(See Exhibits B-5-a and C-1-b)*

B. Factor Not Met – **The power either alone or in addition to another employer, directly or indirectly, to hire or fire, modify the employment conditions, or determine the pay rates or the methods of wage payment for workers.** Performance First hires and fires its own employees. *(See Exhibits B-5[reverse] through B-5-a and C-1-b)* Sutter Health has no say in Performance First's choice of employees. *(See Exhibits C-1-b and B-5[reverse] through B-5-a)* Sutter Health does not schedule employees and does not have anyone who specifically checks for quality. *(See Exhibits B-5[reverse] through B-5-a and C-1-b)* If the Sutter Health Director or a supervisor of Sutter Health's janitorial team (EVS) has an issue with the work performed, they speak to Performance First's supervisor only. *(See Exhibits B-5[reverse] through B-5-a and C-1-b)* Performance First sets the pay rate for its employees, with no input from Sutter Health, and Performance First decides which employees work where, within the contract-specified locations. *(See Exhibits B-5[reverse] through B-5-a and C-1-b)*

C. Factor Not Met – The degree of permanency and duration of the relationship of the parties.

Performance First has a signed contract with Sutter Health as of July 2016. Performance First does not have any other contracts with Sutter Health. *(See Exhibits C-1 and D-6)*

D. Factor Met – The extent to which the services rendered by the workers are repetitive, rote tasks requiring skills which are acquired with relatively little training. Performance First provides general training to its janitorial employees. *(See Exhibit C-1-c)* Sutter Health provides training as necessary for the cleaning of certain rooms at the sites. *(See Exhibit C-1-c)* The services rendered by the employees require relatively little training to acquire. *(See Exhibit C-1-c)*

E. Factor Met – Whether the activities performed by the workers are an integral part of the overall business operation of the employer. The work performed by Performance First's employees is integral to the overall business operations of Sutter Health. *(See Exhibit D-6)*

F. Factor Not Met – Whether the work is performed on Express' premises, rather than on premises owned or controlled by another business entity. Performance First's employees perform work on Sutter Health's worksites. *(See Exhibits C-1 and D-6)*

G. Factor Not Met – Whether Express undertakes responsibilities in relation to the workers which are commonly performed by employers. Performance First pays its employees directly and sets its own pay schedule. *(See Exhibit C-1-b)* Performance First keeps its own timecards and is not required to submit these records to Sutter Health. *(See Exhibit C-1-c)* Per the employer, Sutter Health only requires that the contracted areas are cleaned and staffed by a certain number of employees. *(See Exhibits B-5-a and C-1-c)* Performance Health administers its own FMLA and workers' compensation insurance policies. *(See Exhibit C-1-c)* Sutter Health provides the majority of equipment for the janitors to use. *(See Exhibits B-5[reverse] and C-1-c)*

EXEMPTIONS:

Exemptions claimed.

Applicable:

29 CFR 541.100/Section 213(a)(1):

(b) (6), (b) (7)(C), Former Manager - (b) (6), (b) (7)(C)/week. Primary duty was managing, scheduling, and directing employees at the Sutter Hospital sites in Sacramento, CA. Interviewed, hired, and fired employees. *(See Exhibits B-1, B-5, and C-1-a)*

Danny Williams, Manager - (b) (6), (b) (7)(C)/week. Primary duty is managing, scheduling, and directing employees at

the Sutter Hospital sites in Sacramento, CA. Interviews, hires, and fires employees. *(See Exhibits B-1, B-2, B-3, B-4, B-5, and C-1-a)*

STATUS OF COMPLIANCE:

Reason for Investigation: This investigation was initiated (b) (7)(E) [REDACTED]. The investigation was limited to work performed for Sutter Health in Sacramento, CA.

Prior History: This is the second investigation of Performance First by the Wage and Hour Division.

- **Case ID #1770213.** Period of Investigation 09/06/2012 to 09/03/2015. FLSA Violations: Section 207 and 211, leading to \$55,932.95 in back wages and \$55,932.95 in liquidated damages due to 8 employees. FMLA Violations: Notification violations. *(See Exhibit D-9)*

Section 206 – Minimum Wage: No violations found.

Employees are paid at least the federal minimum wage of \$7.25/hour. *(See Exhibits B-1 through B-5, C-1-a, and D-2 through D-3)*

Section 207 – Overtime: Violations found.

Records review indicated that the employer paid overtime over 40 hours per week. *(See Exhibits C-1-a and D-3 through D-4)* One employee alleged that another employee was not being paid overtime correctly. *(See Exhibit B-1[reverse])* A review of records indicated that overtime was paid per FLSA regulations. *(See Exhibits D-3-v through D-3-w)*

On rare occasions, employees earned multiple rates and were not paid overtime premiums at the correct regular rate. *(See Exhibits D-5 and D-7-f)* However, back wages were not found to be due. *(See Exhibit AA-1)*

Section 207(r)(1)(A) & (B) – Reasonable Break Time & Place, Other than a Bathroom, Shielded from View and Free from Intrusion: No violations found.

Per the employer, there have been no nursing mothers employed at the Sutter Health worksites. *(See Exhibit C-1-b)*

An interview with on-site manager Mr. Danny Williams indicated that one former employee, (b) (6), (b) (7)(C), had been a nursing mother. *(See Exhibits B-5 through B-5-a)* Mr. Williams stated that he provided (b) (6), (b) (7)(C) with a room (night supervisor's office) that was free from intrusion and sheltered from view and allowed (b) (6), (b) (7)(C) as many breaks as necessary. *(See Exhibits B-5 through B-5-a)* WHI viewed the room, which had a table, an outlet, and two doors. Mr. Williams stated that the doors could only be accessed with a master key, which was provided to (b) (6), (b) (7)(C) upon request. *(See Exhibits B-5 through B-5-a)*

In an interview with (b) (6), (b) (7)(C), it was disclosed that (b) (6), (b) (7)(C) was hired at Performance First more than a year after (b) (6), (b) (7)(C) had given birth. *(See Exhibit B-2)* Although the Nursing Mother requirements of the FLSA no longer were applicable, (b) (6), (b) (7)(C) confirmed that (b) (6), (b) (7)(C) had been provided a room, although (b) (6), (b) (7)(C) was concerned that one of the doors could be accessed from outside the room. *(See Exhibits B-2 through B-2-a)*

The employer does not have a nursing mother policy in the handbook. *(See Exhibits C-1-b and D-7)*

Section 211 – Recordkeeping: Violations found.

The firm failed to keep an accurate record of the regular hourly rate of pay, overtime premiums paid, and weekly hours worked, as is required by 29 CFR 516.2. *(See Exhibits AA-1, D-3, and D-5)*

Section 212 – Child Labor: No violations found.

No minors were disclosed during the investigation. *(See Exhibits B-1 through B-5 and C-1-b)*

DISPOSITION:

On 09/07/2017, a final conference was held at the Sutter Health site in Sacramento, CA. Present on behalf of the firm were President Mr. Al Cuevas and Manager Mr. Danny Williams. Present on behalf of the Department was the WHI. Final conference notes were taken. *(See Exhibit D-11)* WHI discussed the limited nature of the investigation, the investigative findings, and all applicable provisions under the FLSA, including minimum wage, overtime, proper recordkeeping, child labor, and nursing mother provisions.

Regarding the disclosed overtime violation,

WHI explained the violations to the employer as outlined in the Status of Compliance section.

The employer stated the following as reasoning for the violations: “Employees rarely earn multiple rates, and they know that when they work overtime, they are getting paid overtime.”

WHI discussed full enterprise compliance regarding overtime, correct calculation of the regular rate, and discussed exemptions. WHI referred the employer to 29 CFR 778.115 and 778.419 and

The employer agreed to future compliance and stated the following: “We will update our policy now and inform employees that if they earn multiple rates, they will be paid overtime at the rate in which it was earned.”

Regarding the disclosed recordkeeping violations,

WHI explained the violations to the employer as outlined in the Status of Compliance section.

The employer stated the following as reasoning for the violations: “Employees know that they get overtime over 40 hours/week. We are aware of employees' weekly hours worked. We just never tracked it in writing.”

WHI discussed recordkeeping per 29 CFR 516, including calculating the regular rate and keeping track of all hours worked.

The employer agreed to future compliance and stated the following: “We will keep track of weekly hours worked. We will update our policy now and inform employees that if they earn multiple rates, they will be paid overtime at the rate in which it was earned.”

The employer agreed to comply with all the provisions of the FLSA. The employer was advised that if violations were found in the future, Civil Money Penalties and/or liquidated damages may be assessed.

The employer was presented with and signed the Enhanced Compliance Agreement (ECA).

The point of contact is Mr. Alvaro Cuevas at (408) 210-1013. Mail can be sent to the establishment at 807 Aldo Avenue, Suite 110 in Santa Clara, CA 95054.

Publications:

The following publications were explained and provided to Mr. Al Cuevas on 09/07/2017: FLSA Poster. HRG. Fact Sheets #13, 14, 17A, 20, 21, 22, 23, 43, 73. Break Time for Nursing Mothers information cards.

HRG and Fact Sheets #44, 77A were mailed to the establishment prior to the initial conference. HRG and Fact Sheets #28D, 44, 73, 77A were provided and explained to Mr. Al Cuevas on 08/09/2017 at the initial conference.

Recommendation:

(b) (7)(E)

It is recommended that the case be closed with no further action.

(b) (6), (b) (7)(C)

Wage & Hour Investigator
09/18/2017

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1828457 Originating District: West Covina District Office
Local Filing Number: 2017-186-08498 Investigating District: West Covina District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 07/24/2017
Assignment Date: 08/11/2017

Employer Information

Trade Name: Staples Legal Name: Staples The Office Superstore, LLC
Address: 19201-A Bear Valley Rd. EIN: 04-3390816
County: San Bernardino
NAICS Code: 4532
Apple Valley, CA92308 No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 08/30/2015 BNPI:
To: 08/29/2017 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Compliance (no violations found) Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

Hrs29. FLSA-NM INV. Ent. Cov. (b) (6), (b) (7)(C) (b) (7)(E) ER failed to offer a place to express milk nor was knowledgeable of FLSANM law. No apparent violations found. ER provided Staples Lactation Accom policy, and space to accom ass as needed. No other FLSA viol. FC held w/S. DeSack on 9/17/17. ER ATC in future with Act. HRG and FS mailed. Rec case admin closed w/ no further action.

WHI Signature: _____ Date: 09/14/2017

Reviewed By: _____ Date: _____

Staples Case ID: 1828457

dba: Staples Store #1426
19201-A Bear Valley Road
Apple Valley, CA 92308
Tel: (760) 961-6472
Fax: (760) 961-9885
Website: <https://www.staples.com>

Local Filing #: 2017-186-08498

EIN: 043-390816

Headquarters Contact:

Susan DeSack,
Sr. Manager OFCCP Compliance
Tel: 508-253-1727
e-Fax: 508-382-5528
Email: Susan.desack@staples.com

FLSA NARRATIVE

COVERAGE

Staples The Office Superstore, LLC; Trade Name: Staples Store #1426 is a retail store engaged in the sale of office supplies which includes: office machines, promotional products, technology, and business services. Staples is a registered Limited Liability Company registered in the State of Delaware (see exhibits C.4.a). The firm sells its products and services to customers online, via catalog, and directly to business and government customers. The firm has been in operation since 1986 and has more than 1500 stores in North America with headquarters based out of 500 Staples Drive Framingham, MA 01702 (see exhibit C.4). The firm employs more than (b) (4) associates and (b) (4) employees at this establishment (see exhibits C.6.-C.6.a).

Corporate officers include, Ronald L. Sargent and Christina Tomlinson Komola as listed on the Secretary of State Statement of Information (see exhibits C.4-C.4.b). Communication for this investigation was with Susan DeSack, Sr. Manager OFCCP Compliance (see exhibit D.2.b-D.2.d). She oversees all employment relations matters handles for all stores in the United States. At the local level, WHI met with Sherry Lewis, General Store Manager and Sherrie Lowe, Human Resource Regional Associate (see exhibit C.7). Sherry Lewis assists in the day-to-day operations of the Apple Valley store and is identified as the 3(d) Employer. She sets the hours of the employees, is in charge of the day to day operations, and has the authority to hire/fire the employees from Staples Store #1426. The Company Policies are set at a Corporate level and related to all employees through manuals, trainings, and postings available online and in-stores (see exhibit C.7, B.2, and D.3)..

The firm's annual dollar volume (ADV) was reported to be over (b) (4) for the previous years as reflected on the tax returns provided reflecting earnings for 2016: (b) (4) (Qt1) (see exhibits C.1-C.1.a); and 2015: (b) (4) (see exhibits C.2-C.2.i); 2014: (b) (4) (see exhibits C.3-C.3.i). All employees of the establishment were covered

on an enterprise basis under Section 3(s)(1)(A) for the entire investigative period. Two or more employees are engaged in interstate commerce as they swipe credit cards on a regular and recurring basis.

The FLSA break time for nursing mothers provisions, FLSANM apply due to the fact that Staples Store 1426 was found to employ at least 50 employees and (b) (6), (b) (7)(C) was not exempt from §7 of the Act.

Period of Investigation:

This was a limited investigation that focused on determining compliance with the FLSANM provisions of the Act. The period of investigation was August 30, 2015 through August 29, 2017.

MODO:

The firm is a multi-unit enterprise with a store located within the boundaries of the West Covina District Office. The firm's headquartered are located in Framingham, MA. (b) (7)(E)

(see exhibit D-1-D.1.a)

EXEMPTIONS

No exemptions were claimed for employees at this branch location. All store associates are employed on an hourly basis.

STATUS OF COMPLIANCE

(b) (7)(E)

(b) (6), (b) (7)(C) (b) (7)(E) prior to (b) (6), maternity leave (b) (6), inquired with (b) (6), Supervisor about a space to express (b) (6), milk upon return to (b) (6), employment. (b) (7)(E) the Supervisor was not familiar with the Nursing Mother Law and was not willing to accommodate (b) (6), needs to lactate every two hours. (b) (6), (b) (7)(C) (b) (7)(E) based on this communication, (b) (6), decided that it would be best to not return back to work as initially planned (see exhibit B.1). Investigative findings (b) (7)(E) (b) (6), (b) (7)(C) (b) (7)(E)

PRIOR HISTORY:

A review of the WHISARD system revealed that the firm has been the subject of approximately 14 prior investigations under the following Acts: CL, FLSA, and FMLA between 2002 through 2006 (see exhibits E.2). This store has not been subject to any prior investigations. This appears to be the compliant filled under the Nursing Mothers Law under Section

207(r) of the FLSA.

On August 29, 2017, an initial conference was held at the Store branch establishment located at 19201-A Bear Valley Road Apple Valley, CA 92308. Representing the Employer was Sherry Lewis, General Store Manager and Sherrie Lowe, Human Resource Regional Associate. All requested records were provided electronically by Susan DeSack including the Written Policy for Nursing Mothers (see exhibit C.5-C.5.a).

Section 6: Compliance.

Due to the limitations of the FLSANM investigation, a limited payroll was conducted to determine compliance. A review of payrolls and time records reveal that all employees earn above the applicable minimum wage with the lowest hourly rate paid at (b) (4) per hour (see exhibit A.0-A.0.a). There were no reports of unpaid hours or discrepancies between the time records and wages paid (see exhibit B.1-B.2). No apparent violations were found under Section 6 of the FLSA.

Section 7: Compliance.

Due to the limitations of the FLSANM investigation, a limited payroll was conducted to determine compliance. During the initial conference the Employer reported that the firm is in the practice of paying in accordance with State and Federal laws. A review of records reveals that overtime compensation was guaranteed to 9 employees (see exhibits A.0-A.0.a). No apparent violations were found under Section 7 of the FLSA.

Section 7(r) of the FLSNM - Break Time for Nursing Mothers Provisions:

(b) (6), (b) (7)(C) (b) (7)(E) the firm does not provide a "reasonable break time for an employee to express breast milk for her nursing child for one (1) year after the child's birth each time such employee has need to express the milk" under Section 7(r)(1)(A) (b) (7)(E)

The Employer provided a Copy of the "Staples Policy: Lactation Accommodations" and instructions on how to request the leave. The Policy is dated 2/1/2013 under policy #HR038 and included in the Employee Handout in the firm's online communication portal identified as "The Hub" (see exhibits C.5-C.5.a, C.7, and B.2). (b) (6), (b) (7)(C) (b) (7)(E) (b) (6). was not provided with guidance on this policy does not correspond documents maintained by the firm. The Employee Associate Handbook includes this policy and was provided to (b) (6), (b) (7)(C) at the time of hire on 4/6/16 (see exhibit D.3).

During the initial conference, the Store Manager confirmed that all associates receive Corporate communications on policies and law updates via trainings in-house online courses, memos on the associate online company portal, and or at the time of hire (see exhibit C.2 & B.2). This corresponds with the communication requirement outlined in the "Staples Policy: Lactation Accommodations." Furthermore, all associate are encourage to contact the Human Resource Department or any outside service providers on clarification with benefits offered and employee issues as outline in the posters located in the

lunch room (see exhibit C.7.b).

The Store Manager alleged that she was not informed of any accommodations by (b) (6), (b) (7)(C), and simply expresses (b) (6), need to stay with (b) (6) baby after giving birth. The Employer provided a summary of (b) (6), (b) (7)(C) reason for (b) (6), separation from the company, as outline in the Determinations Letters for her denial of Unemployment Benefits (see exhibits D.6.a-D.6.d & D.6.g). The Employer's third party Leave provider documented the lack of communication from (b) (6), (b) (7)(C) with request to the status of (b) (6), leave and intent to return to work (see exhibit D.4.a).

(b) (6), (b) (7)(C) (b) (7)(E) the firm does not provide have a “place other than a bathroom that is shielded from view and free from intrusions from coworkers and the public, which may be used by an employee to express breast milk” under Section 7(r)(1)(B) (b) (7)(E)

The firm's policy identifies that “*Staples will provide associates with the use of a room or a private area, other than a bathroom or toilet stall, that shielded from viewed free from intrusion from coworkers and the public. The Company will make a reasonable effort to identify a location within close proximity to the work area from the associates to express mil. This location may be the associate's private office, if applicable.*”

Therefore, (b) (6), (b) (7)(C) (b) (7)(E) does not correspond with the Staple's policy and their notice on the accommodations for those employees that wish to exercise their rights.

Section 11: Compliance.

A limited review of the Record Keeping provisions of the Act were explored during this limited FLSANM investigation. The employer records and employee interview revel that the firm is in compliance with the recordkeeping regulations of the FLSA (see exhibit C.6 & E.1). The employer has the FLSA and FMLA poster in the employee break room and communicates all legal requirements and changes to the law via trainings required to be taken by the employees.

Section 12: Compliance.

No evidence was found that the firm employs minors at the firm. A tour of the establishment revealed a workforce of associates that appeared to be above legal hiring age. There are no apparent violations.

DISPOSITION

On September 14, 2017, WHI (b) (6), (b) (7)(C) held a final conference with Susan DeSack via telephone. At this time, the provisions of the FLSA were discussed in detail, with an emphasis of requirements under the FLSANM Act.

The Employer was informed that the investigation revealed no violations under the FLSANM Act and compliance with the limited review of records under Section 6, 7, 11, and 12. The Employer confirmed that all employees are informed of the

different company's policies at the time of hire, yet was not aware if associates are reminded of the Lactation Policy upon requesting maternity leave. She agreed that as a best practice, the firm would consider re-distributing this policy at the time of maternity leave to ensure any misunderstanding by the associates. Ms. DeSack agreed to continue compliance with the provisions of the Act in the future.

(b) (6), (b) (7)(C) Notification of Findings:

Numerous attempts were made to contact (b) (6), (b) (7)(C) throughout the investigation, yet there was no responds to telephone messages or letters (see exhibit D.7-D.7.a). On September 14, 2017, WHI (b) (6), (b) (7)(C) contacted (b) (6), (b) (7)(C), via phone and was successful in reaching (b) (6), (b) (7)(C). WHI explained legal requirements under the FLSANM and investigative steps taken to determine compliance. (b) (6), (b) (7)(C) was informed of the outcome of the investigation, and documents collected from the Employer demonstrated policy communication to all associates.

Publications:

The following publications were mailed to the headquarters prior to the initial conference: WH Publication 1282 (HRG); Fact Sheet #44 Visit to Employers; Fact Sheet #77a Retaliation Under the FLSA. The following fact sheets were sent after the Final Conference: Fact Sheet #73 Break Time for Nursing Mothers Under the FLSA.

Recommendations:

(b) (7)(E) WHI
(b) (6), (b) (7)(C) recommends that the file be concluded administratively with no further action.

(b) (6), (b) (7)(C)
Wage & Hour Investigator
September 14, 2017

WHISARD Compliance Action Report

U.S. Department of Labor Wage and Hour Division

Case ID: 1764436 Originating District: Seattle District Office
Local Filing Number: 2015-323-07515 Investigating District: Seattle District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 06/25/2015
Assignment Date: 06/26/2015

Employer Information

Trade Name: McDonald's (Corporate owned) Legal Name: McDonald's Restaurants of Washington,
Address: 4640 Whitman Ln SE EIN: 36-2951565
County: Thurston
NAICS Code: 722110
Olympia, WA98513 No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 04/01/2015 BNPI:
To: 07/31/2015 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Full Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

FLSANM. FLSA cov: 3s1a. ER failed to provide adequate space free from intrusion in order express milk. Affects 3 ees at this location. No room with door. FC on 7/28 with atty Karin Jones ATC. ER converted storage space into nursing room on 8/7/15 that met requirements. ER ATC at all corporate locations. Pubs Prov: HRG, FS 44, 73

WHI Signature: _____ Date: 08/18/2015

Reviewed By: _____ Date: _____

McDonald's Restaurants of Washington, Inc
dba McDonald's
4640 Whitman Ln SE
Lacey, WA 98513
Contact: Karin Jones, Atty
206-386-7598
EIN: 36-2951565
Case ID: 1764436

Fair Labor Standards Act Nursing Mothers

This investigation was initiated (b) (7)(E) (b) (6), (b) (7)(C) (b) (7)(E) the employer was not providing a space in order for (b) (6), (b) (7)(C) to express milk during (b) (6), (b) (7)(C) work day. (b) (7)(E) the company agreed to create a space.

The investigation was limited to the Nursing Mothers provision of Section 7 under the FLSA.

Prior Investigative History

There have been no prior investigations of this establishment.

MODO

The business is located in Lacey, WA, but the headquarters is in Chicago, IL. Chicago DO is the MODO. (See D-1)

Coverage

McDonald's is a quick service restaurant that serves American food. Its business operates all over the country as well as overseas, shipping its goods across state lines on a regular basis. The company grosses well over \$500,000 per year and has (b) (4) of employees engaged in interstate commerce because they accept and run credit cards as well as handle goods that have been shipped across state lines. All

employees are covered under §3(s)(1)(a) of the FLSA on an enterprise basis. Since there are more than 50 employees, the coverage includes §207(r); the nursing mothers provision of the FLSA. (See Ex C-1)

The current investigation is limited to §207(r) of the FLSA and (b) (6), (b) (7)(C) in question is a non-exempt employee covered by §207(r).

The present investigation covers the period April 1, 2015 through July 31, 2015.

Exemptions

None claimed and none granted.

Status of Compliance

207(r)(1)(A) – Failure to provide adequate break time (frequency, duration, or complete denial):

No violations found. (b) (6), (b) (7)(C) was given adequate break time to express (b) (6), (b) (7)(C) breast milk. (b) (6), (b) (7)(C) needs to express (b) (6), (b) (7)(C) breast milk three times per shift and (b) (6), (b) (7)(C) was provided all the time (b) (6), (b) (7)(C) needed. (See Ex B-1b)

207(r)(1)(B)- Failure to provide functional space (bathroom not permissible, space not free from intrusion, not shielded from view): Violation found. (b) (6), (b) (7)(C) does not have a private space where (b) (6), (b) (7)(C) can express (b) (6), (b) (7)(C) milk free from intrusion. The manager had initially set up a makeshift space in a storage space but then removed it without warning. The employee's manager, (b) (6), (b) (7)(C), had told (b) (6), (b) (7)(C) to use the bathroom. (See Ex B-1b) Since the space was reverted back to storage, (b) (6), (b) (7)(C) was using the bathroom or (b) (6), (b) (7)(C) car to express milk.

The location does not have any private rooms with a door. The manager's office does not have a door and the space utilized for nursing mothers was the only space with three walls that could be curtained off. It is about the size of a closet with a chair. The space is usually used for bun racks. When WHI (b) (6), (b) (7)(C) visited the location, there was a shower curtain hung across the opening and the security camera had been pointed away from that space in order to ensure privacy. The shower curtain could easily be pushed aside, did not reach the floor or ceiling, and could easily fall down; which happened while in use

according to the complainant. (See Ex B-1a)

Other McDonald's locations have a private room with a lockable door that employees use to change their clothes, and those locations use this employee room for nursing mothers. (See Ex C-1) This location is smaller and has no space that can be converted into a lockable employee room.

207(r)(2) – Compensation for break time: No violations found. The employer paid (b) (6), (b) (7)(C) for all time expressing milk. (See Ex B-1b)

207(r)(3) – Undue Hardship: No violations. The employer has hundreds of employees at or near the location where the employee works and made no objection to its obligation to comply with the law.

Disposition

WHI (b) (6), (b) (7)(C) conducted a final conference via telephone with Attorney Karin Jones on 7/28/15. WHI (b) (6), (b) (7)(C) explained that the space being provided did not meet the requirements under the law since it was not free from intrusion and offered little privacy. (b) (6), (b) (7)(C) advised Attorney Jones that the company would have to make a space that was more secure and put a door on the current space if need be. The company agreed to comply and had been discussing the issue corporate wide since our first meeting. It had not had to deal with this issue before even though many of its locations employ nursing mothers and they have a companywide policy in place requiring establishments to comply with all requests for spaces to express milk. They wanted some time to discuss their options in order to get into compliance and figure out the logistics of creating a space.

The company provided a written response on August 7, 2015, along with pictures showing the improvements they had made to the space. They installed double heavy duty floor to ceiling curtains that secured to the length of each wall with heavy duty Velcro. They also added a large 'do not disturb' sign, changing tents, and personal cover ups for each person using the room. The space met the requirements under the regulations and Attorney Jones stated that the company is making sure they are compliant company wide.

Publications Provided

Fact sheets 44, 73

Recommendation

Recommend close administratively (b) (7)(E)

Further Correspondence

Ms. Karin Jones
Attorney
600 University St, Ste 3600
Seattle, WA 98101
206-386-7598

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1780466 Originating District: San Diego District Office
Local Filing Number: 2016-315-06184 Investigating District: San Diego District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 12/31/2015
Assignment Date: 12/31/2015

Employer Information

Trade Name: U.S. Postal Service Legal Name: United States Postal Service
Address: 9518 Mission Gorge Rd EIN: 41-0760000
County: San Diego
NAICS Code: 491110
Santee, CA92071 No. Of Employees: 62

Investigation Information

Period Investigated From: 01/19/2016 BNPI:
To: 02/01/2016 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Full Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

(b) (6), (b) (7)(C), (b) (7)(E) supervisor interfered with (b) (6), (b) (7)(E) right to take nursing breaks under sec. 7(r) of the FLSA. Drop-IC w/ postmaster Maria Liss, (b) (6), (b) (7)(E) interview, FC w/ supervisor confirmed that Santee post office violated sec. 7(r)(1)(A) since asked if (b) (6), (b) (7)(E) could delay (b) (6), (b) (7)(E) break until a later time. Santee post office ATC. Rec. case admin. closed.

WHI Signature: _____ Date: 03/29/2016

Reviewed By: _____ Date: _____

CASE ID: 1780466
LOCAL ID: 2016-315-06184
EIN: 41-0760000

United States Postal Service
9518 Mission Gorge Road
Santee, CA 92071

FLSA NARRATIVE

CASE ASSIGNMENT INFORMATION:

This full investigation of the United States Postal Service (USPS) (b) (7)(E) (b) (6), (b) (7)(E) (b) (7)(E) supervisor interfered with (b) (7)(E) right to take nursing breaks under §7(r) of the Fair Labor Standards Act (FLSA).

COVERAGE:

The USPS is a publicly owned entity that delivers mail and packages throughout the United States, its territories and military installations worldwide. (See Exs. E-2; E-6). The USPS was established on July 1, 1971 and is currently comprised of approximately 31,662 post office locations that employ an estimated 617,254 employees. (See Exs. E-2; E-6). The USPS's headquarters are situated at 475 L'Enfant Plaza Washington, D.C. 20260 and the Santee post office, one of the USPS's locations, is the subject of the current investigation. (See Exs. D-1; E-2; E-6). The Santee post office is located at 9518 Mission Gorge Road Santee, CA 92071. (See Exs. C-2; E-2). Maria Liss has been identified as the postmaster of the Santee post office and operates the location on a daily basis. (See Exs. B-1; C-1; E-2). Ms. Liss assigns work to employees, sets employee work schedules and resolves employment matters on a daily basis. (See Exs. B-1; C-1; E-2). Based on these facts, Ms. Liss is an "employer" as defined under §3(d) of the Fair Labor Standards Act (FLSA).

Enterprise coverage applies to the Santee post office's average workforce of sixty-two employees since the investigation found that the Santee post office is an activity of a public agency within the meaning of

FLSA §3(s)(1)(C). (See FLSA §3(e)(2)(C), §3(r)(2)(C), §3(x); 29 CFR §553.3; Exs. C-1; E-1 to E-2; E-6). As a result, all Santee post office employees are covered throughout the period of investigation from January 19, 2016 to February 1, 2016.

Moreover, since the USPS is a MUER located within the jurisdiction of the Baltimore District Office (BDO), the BDO is the MODO. (See FOH 61a; Ex. D-1). (b) (7)(E)

(See Exs. D-1; E-1 to E-2).

EXEMPTIONS:

The firm claimed no exemptions during the period of investigation.

STATUS OF COMPLIANCE:

There is no prior history of the Santee post office on record with the San Diego District Office (SDDO). However, there are 1,589 USPS cases currently associated with the BDO's MODO control record (b) (7)(E) that include sixteen active investigations under the FLSA, FMLA and FLSNM. (See Ex. D-1). This full investigation was initiated by (b) (7)(E) (b) (6), (b) (7)(C)

(See Exs. B-1; D-2; E-1). (b) (6), (b) (7)(C) (b) (7)(E) (b) (6), (b) (7)(C) supervisor, Oscar Zamudio, was interfering with (b) (6), (b) (7)(C) right to take nursing breaks under §7(r) of the Fair Labor Standards Act (FLSA). (See Exs. B-1; C-1; E-1 to E-2). A review of initial conference notes, final conference notes, employee interview statements and site photos revealed that (b) (6), (b) (7)(C) was not allowed to take (b) (6), (b) (7)(C) nursing breaks when needed since (b) (6), (b) (7)(C) was asked to wait until (b) (6), (b) (7)(C) scheduled break time. (See Exs. B-1; C-1; E-1 to E-2). As a result, the investigation revealed a section 7(r)(1) violation of the Act. (See Exs. B-1; C-1; E-1 to E-2). No other FLSA violations under sections 6, 7, 11 or 12 were found during the period of investigation.

Section 7(r)(1)

The Santee post office failed to comply with section 7(r)(1)(A) of the Act since supervisory staff

questioned (b) (6), (b) (7)(C) need for a nursing break and asked if (b) (6), (b) (7)(C) could delay (b) (6), (b) (7)(C) nursing break until (b) (6), (b) (7)(C) scheduled break time. (See Exs. B-1; E-1 to E-1). As a result, the Santee post office violated section 7(r)(1)(A) of the Act. (See Exs. B-1; E-1 to E-1). No section 7(r)(1)(B) violation was found since (b) (6), (b) (7)(C) took (b) (6), (b) (7)(C) nursing breaks in a private storage room with a locking door. (See Exs. B-1; E-1 to E-1 to E-2).

Section 11

No record keeping violations were found during the period of investigation. (See Exs. B-1; E-1 to E-1 to E-2). The Santee post office displayed all required federal labor posters at the location. (See Exs. E-1; E-2-E).

Section 12

No child labor violations were found during the investigated period. (See Exs. B-1; E-1 to E-1 to E-2).

DISPOSITION:

On March 28, 2016, Investigator (b) (6), (b) (7)(C) held a telephonic final conference with Santee post office supervisor Oscar Zamudio. (See Ex. E-1). The conference began with a brief overview of the federal minimum wage, overtime, record keeping and child labor provisions of the FLSA. (See Ex. E-1). In addition, the break time for nursing mothers provision under section 7(r)(1) of the Act was also discussed with Mr. Zamudio. (See Ex. E-1). Investigator (b) (6), (b) (7)(C) also informed Mr. Zamudio that additional Wage and Hour Division (WHD) publications would be sent to the Santee post office for review.

The conversation then turned to the compliance status of the Santee post office. (See Ex. E-1). Mr. Zamudio was informed that no federal minimum wage, overtime, record keeping or child labor violations were found during the period of investigation. (See Ex. E-1). However, Mr. Zamudio was then informed that a violation of section 7(r)(1) of the FLSA was found since asking an employee to wait until a scheduled break time to take a requested nursing break was a violation of the Act. (See Ex. E-1). In response, Mr. Zamudio stated that he did not know the laws when (b) (6), (b) (7)(C) initially requested nursing breaks and that he later referred (b) (6), (b) (7)(C) to speak with Maria Liss, the postmaster, about (b) (6), (b) (7)(C) nursing

breaks. (See Ex. E-1). Mr. Zamudio also stated that when (b) (6), (b) (7)(C) asked (b) (6), (b) (7)(C) if (b) (6), (b) (7)(C) could take (b) (6), (b) (7)(C) nursing break, (b) (6), (b) (7)(C) responded by asking (b) (6), (b) (7)(C) if (b) (6), (b) (7)(C) could take a nursing break at another time. Since Mr. Zamudio had previously stated that the Santee post office was not familiar with the nursing mothers provision under section 7(r)(1) of the Act, Investigator (b) (6), (b) (7)(C) asked Mr. Zamudio if the Santee post office agreed to future compliance with the Act's requirements. (See Ex. E-1). In response, Mr. Zamudio stated that the Santee post office definitely agreed to comply with the Act's requirements in the future. (See Ex. E-1). Investigator (b) (6), (b) (7)(C) then asked Mr. Zamudio how the Santee post office would ensure future compliance with the Act's requirements. (See Ex. E-1). In response, Mr. Zamudio stated that the Santee post office would study and follow the labor laws provided for review.

On March 28, 2016, Investigator (b) (6), (b) (7)(C) called (b) (6), (b) (7)(C) and left a voicemail with instructions to contact the SDDO about the investigation.

(b) (7)(E)

I further recommend that the case is administratively closed.

(b) (6), (b) (7)(C)

Wage and Hour Investigator
3/28/2016

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1837161 Originating District: Los Angeles District Office
Local Filing Number: 2018-231-09297 Investigating District: Los Angeles District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 10/30/2017
Assignment Date: 10/30/2017

Employer Information

Trade Name: U.S. Postal Service - Santa Clarita P&DC Legal Name: United States Postal Service
Address: 28201 Franklin Parkway EIN: 41-0760000
County: Ventura
NAICS Code: 491110
Piru, CA93040 No. Of Employees: 1000

Investigation Information

Period Investigated From: 11/21/2015 BNPI:
To: 11/20/2017 Reinvestigation: ☒
Investigation Type: (b) (7)(E) Recurring Violation: ☒
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

Total Violations Under FLSNM: 3 \$0.00

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

Reinvestigation of FLSANM. Firm is US Postal Service. Enterprise Cov. est as named gov. entity. Firm violated sec7r1a, 7r1b & 15a3. Firm agreed to comply. Letter of Warning was taken of (b) (6), (b) (7)(C) record. Attorney Catherine V. Meek is currently writing a nursing mothers' policy to be implemented and distributed to the establishment

WHI Signature: _____ Date: 01/25/2018

Reviewed By: _____ Date: _____

Trade Name: United States Postal Service
Legal Name: United States Postal Service
28201 Franklin Parkway
Santa Clarita, CA 91383

Case ID: 1837161
Case File: 2017-231-09297
EIN: 41-0760000
Phone: (661) 775-7000

**Fair Labor Standards Act – Nursing Mothers (FLSANM)
Narrative Report**

Coverage

3(s)(1)(c): Enterprise coverage of the firm was established. The United States Postal Services (USPSC) is an independent public agency.

Section 7(r)(3) Less Than 50 Employees: The firm has in excess of 50 employees and as such are subject to the nursing mothers' provisions as stated in section 7(r)(3) of the Fair Labor Standards Act (FLSA)

Reason for investigation: The case was initiated (b) (7)(E) (b) (6), (b) (7)(C) recently gave birth and states that (b) (7)(E) requested space from (b) (6), (b) (7)(C) employer to express (b) (6), (b) (7)(C) milk and was provided spaces that were not private and were dirty and did not provide the appropriate amenities. (b) (6), (b) (7)(C) also (b) (7)(E) (b) (6), (b) (7)(C) was not allowed an adequate number of times to pump each day and was eventually written up for exiting the workplace and pumping in (b) (6), (b) (7)(C) car for an hour (Ex B-1 & D-3).

Period for this Investigation: This is a limited investigation of the processing department that covers the period of November 21, 2015 to November 20, 2017. An initial conference was held November 20, 2017 with attorney Catherina Meek at the Long Beach Law Department of the United States Postal Service (Ex C-1).

Nature of Business: The United States Postal Service is an independent public agency that is tasked with delivering mail and parcel throughout the United States of America.

Business Structure: The United States Postal Service is led nationally by the Postmaster General. The current Postmaster General is a Ms. Megan Brennan. The local Santa Clarita Processing and Distribution Center is broken into two primary departments; the customer care department and the processing department (Ex C-2).

Branch Establishments: The United States Postal Service operates thousands of branches across the United States and its territories. The headquarters are located at:

475 L'Enfant Plaza SW
Washington, D.C. 20260

MODO Information: The MODO process applies The Baltimore District Office is the MODO. (b) (7) No specific instructions were given by the MODO.

Workforce: During the time of the initial conference the Santa Clarita P&DC employed approximately (b) (4) employees. This includes employees in the processing/distribution and customer service departments.

Interstate Commerce: Members of the processing and distribution department handle mail (postcards, letters, envelopes and packages) that are regularly shipped in interstate commerce. Mail processed through the facility arrives from out of state and the facility as processes mail to be sent out of state.

Annual Dollar Volume: The firm's annual gross dollar volume of sales for 2014, 2015 and 2016 has been in excess of \$500,000. The firm has reported its annual revenue for the 2016 fiscal year as \$71 billion (Ex C-3).

Section 3(d) Employer: (b) (6), (b) (7)(C) is the 3(d) employer as defined under the FLSA. (b) (6), (b) (7)(C)

regularly makes suggestions for employees to be terminated and also makes decisions on behalf of the company, including setting employee schedules.

Prior Investigation: This is the 19 investigation and/or (b) (7)(E) of the United States Postal Service by the Los Angeles District Office within the last five years. This includes FLSA, FMLA and FLSANM investigations. This is also the approximately 661th investigation of USPS by the Wage and Hour Division within the last five years. There are also four additional investigations simultaneously being conducted by the Los Angeles District Office. This includes Case I.D. 1833068, 1828239, 1820738 and 1816036.

Representative: During the course of the investigation the firm obtained the services of in-house counsel Catherine Meek and Tuyet T. Nguyen. Both Ms. Meek and Ms. Nguyen are attorneys for the Pacific Area Law Office of the United States Postal Service (Ex D-5).

Exemptions

Section 13(a)(1): Executive, Administrative or Professional Exemption: The nursing mother who is subject of the investigation was determined to not be exempt from the overtime provisions of the act. (b) (6), (b) works as a mail processing clerk and was paid an hourly rate. As such, (b) (6), (b) was not considered exempt from the nursing mother provisions of the FLSA found in section 7(r).

Status of Compliance

During the course of this investigation it was determined that the firm was in violation of the nursing mothers' provision of the Fair Labor Standards Act and its retaliation provisions. The firm violated §7(r)(1)(a), §7(r)(1)(b) and §15(a)(3). The firm violated the nursing mother provisions of the act by failing to provide a reasonable amount of break time and failing provide an adequate space for one nursing mother. Discussions with the firm determined that they did not have a policy in place that would allow for successful implementation of the nursing mothers' provision of the act. As a result, managerial staff often made mistakes and caused violations to occur when the need arose for a mother to express (b) (6), (b) milk. The firm eventually retaliated against the employee by reprimanding (b) (6), (b) for expressing (b) (6), (b) milk in (b) (6), (b) car.

Section 6 Minimum: This investigation was limited to the nursing mothers' provisions of the act.

Section 7 Overtime: This investigation was limited to the nursing mothers' provisions of the act.

Section 7(r)(1)(a) Reasonable Break Time for Nursing Mothers: During the course of the investigation the firm was determined to be in violation of this section of the FLSA. The firm violated this section of the act by failing to provide an adequate amount of breaks for one employee. Employee (b) (6), (b) (7)(C) (Ex B-1) required at least five breaks to express (b) (6), (b) (7)(C) milk during (b) (6), (b) (7)(C) shift, however, the supervising staff did not allow (b) (6), (b) (7)(C) to take the necessary amount of breaks and also limited (b) (6), (b) (7)(C) time to 15 minutes (Ex B-1). The supervisor who denied the additional breaks and limited (b) (6), (b) (7)(C) time was a (b) (6), (b) (7)(C) eventually was allowed to only express milk during (b) (6), (b) (7)(C) lunch and (b) (6), (b) (7)(C) paid breaks. Due to the limitations, (b) (6), (b) (7)(C) was forced to go to the restroom and express (b) (6), (b) (7)(C) milk into the toilet to relieve the pressure.

Section 7(r)(1)(b) Adequate Space for Nursing Mothers: During the course of the investigation the firm was determined to be in violation of this section of the FLSA. The firm violated this section by failing to provide an adequate space for one employee to express (b) (6), (b) (7)(C) milk. Specifically, the firm failed to provide employee (b) (6), (b) (7)(C) (Ex B-1) with a space that was free from intrusion and shielded from view from (b) (6), (b) (7)(C) coworkers. The firm also failed to provide a space that was sanitary.

The firm initially provided (b) (6), (b) (7)(C) with a sanitary space that was free from intrusion; this space was a room within a supervisor's office. However, the room was not always made available and (b) (6), (b) (7)(C) was forced to utilize other spaces to express (b) (6), (b) (7)(C) milk. These spaces included an employee locker room, a supervisor locker room and (b) (6), (b) (7)(C) personal vehicle. The employee locker room is an open space that all employees have access to. Employees are able to walk in and out of the locker room to store or retrieve personal items. The space also lacks tables and only has benches. (b) (6), (b) (7)(C) has claimed that (b) (6), (b) (7)(C) saw ants and cockroaches on at least one occasion and was also forced to pump on the floor due to the layout of the benches and power outlets. The supervisor's locker room is similar to the employee locker room with the exception that it is smaller and a keycard is required to gain access. However, the space is not free from intrusion and supervisors have free access to the space while (b) (6), (b) (7)(C) expressed milk.

(b) (6), (b) (7)(C) began using (b) (6), (b) (7)(C) personal vehicle to express (b) (6), (b) (7)(C) milk On September 9, 2017 and continued to do so until October 2, 2017. (b) (6), (b) (7)(C) began using the space because (b) (6), (b) (7)(C) believed it was easier and

more sanitary for (b) (6), (b) (7)(C) than the other available options.

Timeline

(b) (6), (b) (7)(C): First Day Back to Work
(b) (6), (b) (7)(C): Used Employees' Locker Room to Express Milk
(b) (6), (b) (7)(C): Began Using Supervisor's Locker Room
(b) (6), (b) (7)(C): Began Using (b) (6), (b) (7)(C) Personal Vehicle
(b) (6), (b) (7)(C): Last Day Using Personal Vehicle & Reprimanded
(b) (6), (b) (7)(C): Began Using Employee Locker Room Again

Section 11: This investigation was limited to the nursing mothers' provisions of the act.

Section 12: The firm was determined to be in compliance with the child labor provision of the FLSA.

Section 15(a)(3) Prohibitive Acts: The firm violated the prohibitive acts provision of the FLSA by retaliating against employee (b) (6), (b) (7)(C). The firm retaliated against (b) (6), (b) (7)(C) by reprimanding (Ex D-3) (b) (6), (b) (7)(C) for utilizing time to express (b) (6), (b) (7)(C) milk outside the Santa Clarita PD&C premises. The firm's failure to provide an adequate consistent space for (b) (6), (b) (7)(C) to nurse ultimately resulted in (b) (6), (b) (7)(C) choosing to nurse in (b) (6), (b) (7)(C) vehicle in the Santa Clarita P&DC parking lot (Ex B-1). As a result of taking both the time and choosing this space the firm gave (b) (6), (b) (7)(C) a seven day suspension (Ex D-3). This seven day suspension was eventually reduced to a letter of warning and was to remain on (b) (6), (b) (7)(C) record for a period of 9 months (Ex D-3a).

(b) (6), (b) (7)(C) was contacted on January 25, 2018 and informed of the findings of the investigations. (b) (6), (b) (7)(C) was informed that the firm was found to be in violation of section 7(r)(1) and section 15(a)(3).

Disposition

A final conference (Ex D-1) was held on January 24, 2018 at the Long Beach Post Office located at 300 Long Beach Blvd. The final conference was held with attorneys Tuyet Nguyen and Alex Roberson as lead attorney Catherine Meek was out of town.

WHI (b) (6), (b) (7)(C) briefly explained coverage and reiterated the investigative period with each of them. They were informed of the violations under section 7r, the nursing mothers' provision of the FLSA and the retaliation provisions. Ms. Nguyen stated she was taken off of the case by Catherine Meek and was unaware of the status of the investigation. However, WHI (b) (6), (b) (7)(C) informed her of the status of the investigation and also the violations that occurred and how they occurred. They were each informed that the firm violated section 7(r)(1)(a) and 7(r)(1)(b) by failing to provide reasonable break time and an adequate space for employee (b) (6), (b) (7)(C) to nurse. Ms. Nguyen and Mr. Roberson were also informed that (b) (6), (b) (7)(C) recently had an equal employment and opportunity mediation meeting and a decision was made between varying parties that the letter of warning that was placed on (b) (6), (b) (7)(C) record would be removed. WHI (b) (6), (b) (7)(C) requested Ms. Nguyen to provide proof that this agreement took place. Ms. Nguyen stated that she would pass the information along to Ms. Meek

During a previous meeting that took place on November 20, 2017 attorney Catherine Meek agreed to come into compliance with the FLSA nursing mothers' provision by ensuring that management staff at both the Santa Clarita P&DC and Los Angeles P&DC are aware of what the regulations are and how to implement and respond to requests to nurse. Ms. Meek then stated that she is currently working on an internal policy that can be distributed to management. The policy will include information that discusses the spaces that are available to nursing mothers, the amount of times a mother may express milk, the pay policy, milk storage locations, status of bona-fide exempt employees and more. However, Ms. Meek stated the policy will take some time to write and may require a formal review process. WHI (b) (6), (b) (7)(C) informed (b) (6), (b) (7)(C) that this was a good step in the right direction and requested (b) (6), (b) (7)(C) to provide a copy of the policy once an adequate draft has been devised.

On January 24, 2018 (b) (6), (b) (7)(C) provided documentation (Ex D-4) showing that (b) (6), (b) (7)(C) and the postal service reached a settlement agreement to have the seven day suspension notice that was reduced to a letter of warning removed from (b) (6), (b) (7)(C) record. This was to be removed from (b) (6), (b) (7)(C) record no later than January 12, 2018. The document was signed by (b) (6), (b) (7)(C), supervisors (b) (6), (b) (7)(C) representative Brian Conrad.

Recommendations: It is recommended that this case be administratively closed (b) (7)(E)

Publications provided: FLSA, HRG, Fact Sheets 44, 73, and 77A and Federal Register Vol. 75 No. 244.

(b) (6), (b) (7)(C)

Wage and Hour Investigator
January 25, 2017

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1855472 Originating District: Seattle District Office
Local Filing Number: 2018-323-08501 Investigating District: Seattle District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 06/01/2018
Assignment Date: 06/01/2018

Employer Information

Trade Name: Octapharma Plasma
Address: 510 E. Francis Street

Spokane, WA99208

Legal Name: Octapharma Plasma, Inc.
EIN: 20-0561852
County: Spokane
NAICS Code: 621991
No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 06/14/2016 BNPI:
To: 06/13/2018 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☒
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

Total Violations Under FLSA: 1 \$0.00

WHISARD Compliance Action Report

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	
Total Violations Under FLSNM:	2						\$0.00

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

FLSANM (b) (7)(F) -bsd inv; 3(s)(1)(A) cvg; ER has 50+ EEs; EE not Sec 7 exempt + cov'd by NM prov'n; FLSANM vios due to ER not prvdg adeq time to (b) (6) for exprssg milk, ER not provdg space shielded frm vw + intrusn-free for pmpg, ER improperly dedctg regular brk tm from (b) (6) for exprssg milk; FLSA Sect. 11 vio due to ER improperly dedctg 15-min brk time from (b) (6), (4) No BWs. FC with ER reps Wilson, Aucoin, Chism, Huicochea at est on 6/13/18; ER ATFC; Pbs-FLSA,HRG, 516,541,778,785,CL101; Rec admn close (b) (7)(E)

WHI Signature: _____ Date: 06/27/2018

Reviewed By: _____ Date: _____

Octapharma Plasma Case ID: 1855472

Octapharma Plasma
510 E. Francis Street
Spokane, WA 99208

ER Corporate Headquarters:

Octapharma Plasma, Inc.
10644 Westlake Drive
Charlotte, NC 28273

EIN # 20-0561852

Contact Information:

Julie Wilson – Director of Human Resources
10644 Westlake Drive
Charlotte, NC 28273
Phone: (704) 654-4629
Email: julie.wilson@octapharmaplasma.com

**FAIR LABOR STANDARDS ACT (FLSA) NURSING MOTHERS
NARRATIVE REPORT**

COVERAGE

Octapharma Plasma, Inc., d.b.a. Octapharma Plasma, is a U.S.-based corporation that collects plasma used to create pharmaceutical products for consumers around the world. The firm runs over 80 plasma donation centers around the United States, and employs over (b) (4) people nationally. The firm is unaffiliated with any franchise operation. (Exhs. C-1, C-5, C-8).

Octapharma Plasma, Inc. is 100% owned by Octapharma AG, a pharmaceutical firm based in Switzerland. The president of Octapharma AG is Frederic Marguerre. (Exhs. C-1, C-4). The subject Octapharma Plasma location is in Spokane, Washington, and employs approximately (b) (4) workers, engaged to perform medical screening and physical examination of donors, venipuncture and extraction of plasma from donors using Haemonetics plasma collection machines, processing of plasma donations and samples, quality assurance to ensure standard operating procedures, and management staff. (Exhs. C-1, D-2).

Octapharma Plasma began doing business in 2008 in Atlanta, Georgia, and was incorporated at that time. The Spokane, Washington location of Octapharma opened in June of 2010. (Exhs. C-1, C-6, C-7).

According to federal business tax documentation and information provided by the employer, the annual dollar volume of gross business receipts for Octapharma Plasma, Inc. was (b) (4) in 2015, (b) (4) in 2016, and will exceed (b) (4) in 2017. Employees of the firm regularly handle items, such as Haemonetics tubing and parts, manufactured in Holbrook, Massachusetts, and Office Depot paper and pens, manufactured in Boca Raton, Florida. (Exhs. C-1, C-2, C-3).

Therefore, this employer is covered on an enterprise basis per FLSA §203(s)(1)(A), because employees of the firm regularly handle goods that have been shipped in interstate commerce, and because the firm consistently has an annual dollar volume of over \$500,000.00.

Period of Investigation: The investigation was limited to the subject Octapharma Plasma establishment in Spokane, Washington, where the complainant was employed, and covered the period June 14, 2016 through June 13, 2018.

Prior history:

Case ID: 1597487 – Registered 10/05/2010. FLSA investigation conducted by WHI (b) (6), (b) (7)(C) of Richmond D.O. Investigative period 7/1/2010 to 7/23/2011. (b) (6), (b) (7)(E) of ER erasing OT hours from electronic time record (b) (7)(E) RK violation for no time records for 1 misclassified (non-exempt) EE. No BWs. ER representative Ms. Mean agreed to comply. (Exh. D-3).

Case ID: 1717134 – Registered 1/16/2014. FMLA investigation conducted by WHI (b) (6), (b) (7)(C) of Little Rock D.O. Investigative period 2/12/2012 to 2/1/2014. WHI found that ER was not covered under the FMLA due to ER establishment not employing 50 or more EEs for at least 20 weeks of the calendar year. (Exh. D-4).

Case ID: 1737371 - Registered 8/8/2014. FMLA investigation conducted by WHI (b) (6), (b) (7)(C) of Raleigh D.O. Investigative period 4/16/2014 to 12/4/2014. FMLA violation for wrongful termination. (b) (6), (b) (7)(E) found due \$4,889.10 in lost wages after mitigation. ER agreed to remedy, agreed to future compliance and agreed to pay back wages. CT declined BWs and obtained own attorney. Case administratively closed, no further action. (Exh. D-5).

MODO: Octapharma Plasma, Inc. is headquartered in Charlotte, North Carolina and has approximately 84 business locations throughout the United States. (Exhs. C-1, C-5, C-8). Therefore, this firm is a multi-unit employer under F.O.H. §61a00(c) and the MODO is the Raleigh, North Carolina District Office.

(b) (7)(E)

(Exh. D-1).

Section 3(d) Employer:

Chad Chism and Elmer Huicochea are Assistant Managers at the Spokane, Washington location of Octapharma Plasma; there is currently no Site Manager employed at the subject location. Mr. Chism and Mr. Huicochea are responsible for hiring and firing employees for the subject location, determining rates of pay for employees, setting employee schedules, preparing payroll, paying employees, and regularly supervising employees' work. (Exhs. B Exhibits, C-1).

Chad Chism and Elmer Huicochea are therefore found to be employers of Octapharma Plasma, Inc. under §203(d) of the Act.

EXEMPTIONS

FLSA §213(a)(1):

29 CFR §541.100 Executive Employees: Applicable.

Chad Chism and Elmer Huicochea are Assistant Managers at the Spokane, Washington location of Octapharma Plasma, and (b) (6), (b) (7)(C) is the Quality Assurance Supervisor. Mr. Chism, Mr. Huicochea, and (b) (6), (b) (7)(C) are each paid on a salary basis at over \$455 per week, are each in charge of supervising the location or a subdivision thereof, and are each supervising 2 or more full-time employees. Mr. Chism and Mr. Huicochea make hiring and firing decisions on behalf of the firm, and (b) (6), (b) (7)(C) recommendations as the hiring and firing of employees are given significant weight. The employer was therefore found to have properly classified Mr. Chism, Mr. Huicochea, and (b) (6), (b) (7)(C) as exempt under §541.100. (Exhs. B exhibits, C-1, D-2).

The firm did not claim any other exemptions for employees. No other exemptions were found to be applicable.

STATUS OF COMPLIANCE

This investigation was initiated (b) (7)(E) (b) (6), (b) (7)(C) at the firm's Spokane, Washington location (b) (6), (b) (7)(E) the employer had not provided (b) (6), (b) (7)(E) with sufficient break time to express milk at work. (b) (6), (b) (7)(C) (b) (7)(E) the employer had failed to provide (b) (6), (b) (7)(E) with an appropriate space where (b) (6), (b) (7)(E) could express milk during (b) (6), (b) (7)(E) work day. (b) (6), (b) (7)(C) also (b) (7)(E) the employer harassed (b) (6), (b) (7)(E) about expressing milk at work.

(b) (6), (b) (7)(C) (b) (7)(E). The investigation revealed that the employer had limited the amount of break time (b) (6), (b) (7)(C) was allowed to take daily to express milk, although (b) (6), (b) (7)(C) had requested more time. The investigation revealed that the employer failed to provide (b) (6), (b) (7)(C) with a place to express milk which was shielded from view and free from intrusion from coworkers. Finally, the investigation revealed that the employer questioned (b) (6), (b) (7)(C) repeatedly regarding (b) (6), (b) (7)(C) right to take breaks to express milk, and asserted that (b) (6), (b) (7)(C) was not within (b) (6), (b) (7)(C) right to take breaks to express milk outside of the employer-imposed break restrictions.

(b) (6), (b) (7)(C) (b) (7)(E) and the information (b) (6), (b) (7)(C) provided for this investigation on May 24, 2018. (Exh. (b) (7)(E) form).

Section 206: No violation. The investigation revealed that the employer properly paid all employees for all hours worked at at least the federal minimum wage of \$7.25, in accordance with this section. (Exhs. A-1, A-2, B Exhibits, D-7). (b) (6), (b) (7)(C) (b) (7)(E) on May 17, 2018, the employer improperly deducted a 15-minute break period from (b) (6), (b) (7)(C) hours worked. (b) (7)(E) through a review of time and payroll records. However, this deduction did not bring (b) (6), (b) (7)(C) rate below \$7.25 for the workweek. (Exhs. A-1, A-2, B-4, D-7).

Section 207(a) – Overtime: No violation. The investigation revealed that the employer properly paid non-exempt employees for their hours worked over 40 in a workweek at at least one and one half times their regular rate of pay. (Exhs. A-1, A-2, B Exhibits).

Section 207(r) – Break Time for Nursing Mothers:

207(r)(1)(A) – Failure to provide adequate break time (frequency, duration, or complete denial):

Violation found. The investigation revealed that the employer failed to provide adequate time for (b) (6), (b) (7)(C) to express (b) (6), (b) (7)(C) breast milk. Following the birth of (b) (6), (b) (7)(C) baby (b) (6), (b) (7)(C) returned to work (b) (6), (b) (7)(C) worked 5-hour shifts five times per week from May 6, 2018 to May 21, 2018, and began working 8-hour shifts five times per week beginning May 22, 2018. (b) (6), (b) (7)(C) was accustomed to nursing (b) (6), (b) (7)(C) baby or expressing milk every 1½ or 2

hours, but when (b) (6), (b) (7)(C) returned to work, the center manager, (b) (6), (b) (7)(C) told (b) (6), (b) (7)(C) would get only an additional 15 minutes tacked on to (b) (6), (b) (7)(C) standard 15-minute break for the period during which (b) (6), (b) (7)(C) was working 5-hour days (for a total of ½ hour per 5-hour shift), and only the 15 minutes tacked onto (b) (6), (b) (7)(C) morning break and (b) (6), (b) (7)(C) standard lunch break for the period during which (b) (6), (b) (7)(C) was working 8-hour days. (Exhs. B-1, B-2, B-3, B-4). (b) (6), (b) (7)(C) stated that since (b) (6), (b) (7)(C) was terminated from the company on May 27, 2018, (b) (6), (b) (7)(C) was permitted to take an additional 15 minutes per day, tacked on to (b) (6), (b) (7)(C) afternoon break, to express milk. (Exh. B-4).

Because the employer failed to provide (b) (6), (b) (7)(C) with a reasonable break time to express milk each time (b) (6), (b) (7)(C) had need to express the milk, and instead dictated when (b) (6), (b) (7)(C) would be permitted to express milk, the employer was found to be in violation of this section.

207(r)(1)(B) – Failure to provide functional space (bathroom not permissible, space not free from intrusion, not shielded from view): Violation found. The investigation revealed that the employer did not consistently provide (b) (6), (b) (7)(C) with a private space where (b) (6), (b) (7)(C) could express (b) (6), (b) (7)(C) milk free from intrusion. According to employee interview statements, (b) (6), (b) (7)(C) as well as other employees who had need to express milk at work following the birth of their babies were sent by the employer to a room in the upstairs storage area of the Spokane, Washington facility which did not have a door. (Exhs. B-1, B-3, B-4). (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) was directed by the site manager, (b) (6), (b) (7)(C), to express milk in that room and was told that other rooms located in the upstairs storage area which did have doors were locked or otherwise unavailable for (b) (6), (b) (7)(C) use. (Exh. B-4). (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) only started using a room in the upstairs storage area with a door when (b) (6), (b) (7)(C) happened to go upstairs and saw that the door to one of the rooms with a door was unlocked and ajar. (Exh. B-4).

A tour of the subject establishment at the time of the site visit on June 13, 2018 confirmed that (b) (6), (b) (7)(C) had been using a room equipped with a door that locked and power outlets for (b) (6), (b) (7)(C) pump, which shielded (b) (6), (b) (7)(C) from view and kept (b) (6), (b) (7)(C) free from intrusion from coworkers or others while expressing milk. (Exh. D-9). However, because the employer had not always provided (b) (6), (b) (7)(C) with a room which shielded (b) (6), (b) (7)(C) from view and intrusion, the employer was found to be in violation of this section.

207(r)(2) – Compensation for break time: Violation found. The investigation revealed that the

employer failed to pay (b) (6), (b) (7)(C) for all time expressing milk during regularly-scheduled breaks. As described above, the investigation revealed that on May 17, 2018, the employer improperly deducted a regularly-scheduled 15-minute break period from (b) (6), (b) (7)(C) hours worked, and failed to pay (b) (6), (b) (7)(C) for those 15 minutes. (Exhs. B-4, D-7). This resulted in a violation of this section.

Back wages: Although the employer's violation resulted in back wages owed to (b) (6), (b) (7)(C), back wages were not computed per WHD guidance since the amount owed as a result of the violation was found to be de minimis. (Exh. D-7).

207(r)(3) – Undue Hardship: No violation. The employer has over 50 employees at the subject location and over (b) (4) employees nationwide, and made no objection to its obligation to comply with the law. (Exhs. C-1, C-8, D-2).

Section 211 – Recordkeeping: Violation found. The investigation revealed that the employer failed to record (b) (6), (b) (7)(C) regularly-scheduled 15-minute break period which (b) (6), (b) (7)(C) used for expressing milk on May 17, 2018 as compensable time, and instead deducted the 15 minutes from (b) (6), (b) (7)(C) hours worked. (Exh. B-4, D-7). This resulted in a violation of 29 C.F.R. §516.2(a)(7), which requires employers to list employees' hours worked each workday on pay records, and §516.2(a)(8), which requires employers to list employees' total daily or weekly straight-time earnings for hours worked.

The employer was found to have posted the FLSA poster in the breakroom at the subject establishment. (Exh. D-9).

Section 212: No violation. The investigation revealed that the employer did not employ anyone under the age of 18 during the investigative period.

DISPOSITION

A final conference was held on June 13, 2018 at the establishment. Present were WHI (b) (6), (b) (7)(C) Octapharma HR Director Julie Wilson, Octapharma Regional Operations Director Stuart Aucoin,

Octapharma Spokane Assistant Manager Chad Chism, and Octapharma Spokane Assistant Manager Elmer Huicochea.

WHI explained the Fair Labor Standards Act and the applicable regulations relating to coverage, exemptions, recordkeeping, minimum wage, overtime, break time for nursing mothers, and child labor. WHI explained that FLSA §203(s)(1)(A) coverage was applicable.

WHI then explained the requirements for exemptions under §213(a)(1) of the Act. WHI notified the employer that employees Chad Chism, Elmer Huicochea, and (b) (6), (b) (7)(C) were found to have been properly classified as exempt from minimum wage and overtime requirements under the executive exemption at §541.100, since they were paid on a salary basis, their main duties included supervising the firm's employees and hiring and firing employees or making recommendations to the owners regarding the hiring and firing of employees which were given particular weight. WHI notified the employer that no other exemptions were found to be applicable.

WHI notified the employer that no violations of the FLSA minimum wage, overtime, or child labor requirements had been found.

WHI explained that the employer had been found to be in violation of the Break Time for Nursing Mothers provisions at FLSA §207(r). WHI explained that the employer had been found to have failed to provide adequate break time for (b) (6), (b) (7)(C) to express milk, according to (b) (6), (b) (7)(C) need. WHI explained that the employer had also been found to have failed to consistently provide a functional space to (b) (6), (b) (7)(C) for expressing milk which was shielded from view and free from intrusion from coworkers and the public. WHI explained that the employer had been found to have failed to compensate (b) (6), (b) (7)(C) properly for break time, since the employer had improperly deducted (b) (6), (b) (7)(C) regularly-scheduled break time from her hours worked on May 17, 2018 when (b) (6), (b) (7)(C) used that time to express milk.

Employer representative Julie Wilson agreed on behalf of the firm to comply in the future with the Break Time for Nursing Mothers requirements at §207(r). Ms. Wilson stated that the firm would work on an individual basis with each nursing mother employee to determine what their specific needs were for expressing milk in order to provide the adequate time required by the regulation. Ms. Wilson stated that

the firm had already designated a space for (b) (6), (b) (7)(C) with a door that locked, and would in future provide a functional, enclosed space with a locking door to nursing mother employees. Ms. Wilson stated that the firm would provide additional information regarding the Nursing Mothers requirements at its upcoming monthly staff meeting at the Spokane location, and would possibly have a separate training for all staff in the future which would be documented. WHI reviewed the Octapharma Employee Handbook with the representatives present and explained that there was no guidance for employees regarding the Nursing Mothers provisions of the FLSA. (Exh. D-8). WHI requested that the firm include information about the FLSA Nursing Mothers provisions in its Employee Handbook, and Ms. Wilson stated that the firm would do this.

WHI explained that the firm had also been found to be in violation of the §211 recordkeeping provisions for failing to record and pay (b) (6), (b) (7)(C) for a 15 minute break period on May 17, 2018. Ms. Wilson agreed on behalf of the firm to comply in the future with the recordkeeping requirements, and to compensate employees for all break periods under 30 minutes in duration.

(b) (6), (b) (7)(C) was notified of the outcome of the investigation on June 13, 2018.

Publications Provided: FLSA, HRG, Reg. Parts 516, 541, 778, 785; CL 101; Fact Sheets - #44, #77A, #73.

Recommendations: It is recommended that this case be administratively closed (b) (4)

Correspondence:

Julie Wilson – Director of Human Resources
Octapharma, Inc.
10644 Westlake Drive

Octapharma Plasma Case ID: 1855472

Charlotte, NC 28273

Phone: (704) 654-4629

Email: julie.wilson@octapharmaplasma.com

Respectfully submitted,

WHI (b) (6), (b) (7)(C)

June 27, 2018

WHISARD Compliance Action Report

U.S. Department of Labor Wage and Hour Division

Case ID: 1747694 Originating District: Phoenix District Office
Local Filing Number: 2015-279-09704 Investigating District: Phoenix District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 12/08/2014
Assignment Date: 12/08/2014

Employer Information

Trade Name: Desert Schools Federal Credit Union Legal Name: Desert Schools Federal Credit Union
Address: 148 N 48th St EIN: 86-0096746
County: Maricopa
NAICS Code: 522130
Phoenix, AZ 85008 No. Of Employees: (b) (7)(E)

Investigation Information

Period Investigated From: 11/01/2014 BNPI:
To: 01/09/2015 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Compliance (no violations found) Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

45.75 total hours. (b) (6), (b) (7)(C) (b) (7)(E) (b) (6), (b) (7)(C) was not given enough adequate time to express break milk and take a bone fide 30 minute lunch break. The investigation revealed that (b) (6), (b) (7)(C) did in fact have adequate time to express milk but did not have enough time to take (b) (6), (b) (7)(C) 30 minute lunch. Section 7r: no violation found. SOC: ER agrees to future compliance and also agreed to write a company policy in place in regards to Nursing Mothers. Rec: admin close

WHI Signature: _____ Date: 03/12/2015

Reviewed By: _____ Date: _____

Desert Schools Federal Credit Union
Dba: Arizona Desert Schools
2750 East Germann Rd
Chandler, AZ 85286
602-474-3619
EIN: 86-0096740
Case ID: 1747694

Headquarters:

148 N. 48th St
Phoenix, AZ 85008

FLSA Narrative- Break Time for Nursing Mothers

Coverage:

Subject firm is a full service financial provider, from savings and lending to online banking and mortgages. There are 52 branches located in the state of Arizona. The main office for the firm is at 148 N. 48th Street Phoenix, AZ 85008. The firm was founded in 1939 and the Ms. Susan Frank is the President/CEO (See exhibit C-2).. The company is a federally insured bank that operates under members and a board of directors. (See exhibit C-3). The 3(d) employers are (b) (6), (b) (7)(C), Branch Manager and (b) (6), (b) (7)(C), immediate supervisor. Both of these individuals are responsible for the day to day operations of the branch such as hiring/firing and dealing with company policies. The firm is represented by Ms. Kristin Culbertson, 602-571-1982, of Littler Mendelson, PC located at 2425 E. Camelback Rd Suite 900, Phoenix, AZ.

The annual dollar volume is over (b) (4) for the past three years (See exhibit C-4). Two or more employees have handled goods that have moved in interstate commerce such invoices, customer information, money transfers, etc. All employees are subject to both enterprise and individual coverage.

The investigation is limited to FLSA Section 207 (r) "Break Time for Nursing Mothers" during the period November 1, 2014 through January 9, 2015. (See (b) (7)(E) Data)

Exemptions:

No exemptions under Sections 213(a) or 213(b) were found applicable to (b) (6), (b) (7)(C), an hourly rated teller who assists customers and who has no supervisory duties.

Status of Compliance:

Prior History: None

MODDO: This is a multiple branch enterprise and branches are located within the geographical region of the Phoenix DO, which is the MODDO.

Reason for Investigation: The investigation was initiated (b) (6), (b) (7)(C), (b) (7)(E). (b) (6), (b) (7)(C) was a nursing mother and was not being given adequate time to express milk and eat (b) (6), (b) (7)(E) lunch. Furthermore, (b) (6), (b) (7)(C) (b) (7)(E) when (b) (6), (b) (7)(C) asked for more time to express milk, (b) (6), (b) (7)(C) was told by HR that (b) (6), (b) (7)(C) would need to provide a doctor's note. (b) (6), (b) (7)(C) stated that prior to (b) (6), (b) (7)(C) coming back to work from FMLA (b) (6), (b) (7)(C) told (b) (6), (b) (7)(C), Branch Manager, that (b) (6), (b) (7)(C) would need a designated area for expressing milk. Upon (b) (6), (b) (7)(C) first day back (b) (6), (b) (7)(C) was told (b) (6), (b) (7)(C) would be able to use (b) (6), (b) (7)(C) office which now came equipped with a lock and blinds. (b) (6), (b) (7)(C) gave birth to (b) (6), (b) (7)(C) baby (b) (6), (b) (7)(C).

Timeline:

(b) (6), (b) (7)(C) returned back to work after exhausting all FMLA leave.

(b) (6), (b) (7)(C) worked first shift starting at 9:30am until 7:30pm and (b) (6), (b) (7)(C) was given two paid fifteen minute breaks and one half hour unpaid lunch break. (b) (6), (b) (7)(C) continued with this schedule until (b) (6), (b) (7)(C).

(b) (6), (b) (7)(C) stated (b) (6), (b) (7)(C) told (b) (6), (b) (7)(C) immediate supervisor, and (b) (6), (b) (7)(C) Branch Manager, that (b) (6), (b) (7)(C) needed more time to express milk. (b) (6), (b) (7)(C) was then given 30 minutes unpaid in the morning, 45 minutes unpaid for lunch and to express milk and 30 minutes unpaid in the afternoon. (b) (6), (b) (7)(C) continued this schedule until (b) (6), (b) (7)(C).

(b) (6), (b) (7)(C) stated (b) (6), (b) (7)(C) told (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) did not have enough time to express milk and eat (b) (6), (b) (7)(C) lunch. (b) (6), (b) (7)(C) schedule was broken down as:

30 minutes unpaid – A.M.

15 minutes paid – A.M.

45 minute unpaid- 30 minutes for expressing milk and 15 minutes for eating lunch

30 minute unpaid – P.M.

15 minute paid – P.M.

Total of 2 hour and 15 minutes for a 10 hour shift.

(b) (6), (b) (7)(C) stated that it takes (b) (6), (b) (7)(C) 30 minutes to express milk, which left (b) (6), (b) (7)(C) with only 15 minutes to get to/from the employee break room and to eat (b) (6), (b) (7)(C) lunch. (b) (6), (b) (7)(C) stated it took a minimum of 10 minutes total to get to and from the break room which left only 5 minutes to eat her lunch. (b) (6), (b) (7)(C) stated (b) (6), (b) (7)(C) requested an additional 15 minutes to be able to have a bone fide 30 minute lunch break which all other employees received and that HR was notified of (b) (6), (b) (7)(C) request, but no additional time was given. According to (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) told (b) (6), (b) (7)(C) could come in before (b) (6), (b) (7)(C) scheduled shift started to express milk before (b) (6), (b) (7)(C) shift if (b) (6), (b) (7)(C) needed additional time. (b) (6), (b) (7)(C) confirmed to Wage and Hour on 1/9/15 that (b) (6), (b) (7)(C) did offer (b) (6), (b) (7)(C) the option to come in prior to (b) (6), (b) (7)(C) shift starting but stated it was only an option and was not meant to be mandatory.

(b) (6), (b) (7)(C) stated Melissa Dalton, HR, sent (b) (6), (b) (7)(C) an email stating that unless (b) (6), (b) (7)(C) brought in a doctor's note by November 24, 2014 (b) (6), (b) (7)(C) would not be allowed any additional break time to express milk. Furthermore, (b) (6), (b) (7)(C) stated that this email stated that if (b) (6), (b) (7)(C) did not bring in a doctor's note (b) (6), (b) (7)(C) would only be allowed the two fifteen minute paid breaks and the one-half hour unpaid lunch break. (See exhibit D-5).

(b) (6), (b) (7)(C) stated (b) (6), (b) (7)(C) arrived at work and gave (b) (6), (b) (7)(C) doctor's note stating that (b) (6), (b) (7)(C) needed to express milk every 2-3 hours for at least a half hour. (b) (6), (b) (7)(C) also stated (b) (6), (b) (7)(C) advised (b) (6), (b) (7)(C) that due to (b) (6), (b) (7)(C) being unable to express milk as often and frequently as needed, (b) (6), (b) (7)(C) milk supply was slowing down and (b) (6), (b) (7)(C) was unable to keep up with the demands of feeding (b) (6), (b) (7)(C) child. (b) (6), (b) (7)(C) also stated (b) (6), (b) (7)(C) told (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) was giving (b) (6), (b) (7)(C) two week notice of (b) (6), (b) (7)(C) intent to quit (b) (6), (b) (7)(C) job on (b) (6), (b) (7)(C) and wanted to use all (b) (6), (b) (7)(C) unused vacation and sick leave in the next two weeks. (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) told (b) (6), (b) (7)(C) could not do that and they agreed that (b) (6), (b) (7)(C) last day would be (b) (6), (b) (7)(C). (b) (6), (b) (7)(C) advised Wage and Hour on 1/9/15 that (b) (6), (b) (7)(C) did not give (b) (6), (b) (7)(C) a doctor's note and that (b) (6), (b) (7)(C) told (b) (6), (b) (7)(C) was terminating the company due to not having anyone to watch (b) (6), (b) (7)(C) kids.

(b) (6), (b) (7)(C) stated (b) (6), (b) (7)(C) called (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) and told them (b) (6), (b) (7)(C) injured (b) (6), (b) (7)(C) back and that (b) (6), (b) (7)(C) was not coming into work because (b) (6), (b) (7)(C) did not have another baby sitter for (b) (6), (b) (7)(C) children.

(b) (6), (b) (7)(C) stated (b) (6), (b) (7)(C) also called (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) and advise them (b) (6), (b) (7)(C) was not coming into work due to (b) (6), (b) (7)(C) injury. However, (b) (6), (b) (7)(C) advised Wage Hour on 1/9/15 that (b) (6), (b) (7)(C) never called in stating that (b) (6), (b) (7)(C) was not coming into work and that (b) (6), (b) (7)(C) was determined to be a 'no call no show.'

Results: Upon review of all information provided by (b) (6), (b) (7)(C), WHI (b) (6), (b) (7)(C) has determined that there was

not a nursing mother's violation under Section 7(r) of the Act. After speaking to (b) (6), (b) (7)(C), it was determined that (b) (6), (b) (7)(C) was upset that (b) (6), (b) (7)(C) was not given an additional 15 minutes for (b) (6), (b) (7)(C) lunch break. (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) should have been given one hour at mid-day for expressing milk and taking (b) (6), (b) (7)(C) lunch break. WHI (b) (6), (b) (7)(C) explained to (b) (6), (b) (7)(C) that if (b) (6), (b) (7)(C) received enough adequate time for expressing breast milk then it was not going to be a nursing mother's violation. (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) understood.

Section 6: No violation found

Section 7: No Violation found

Section 11: No violation found

Section 12: No violation found

Disposition:

A final conference was held on March 5, 2015 at the establishment with Attorney Kristin Culbertson, HR representative, Melissa Dalton and Vice President in Human Resources, Melissa Dansour by WHI (b) (6), (b) (7)(C). At this final conference, WHI (b) (6), (b) (7)(C) explained to the three the regulations and responsibilities of employers under Nursing Mothers. WHI (b) (6), (b) (7)(C) specifically explained that employers with 50 or more employees need to accommodate nursing mothers who need to express milk by giving them a location to express but also, to allow them to express as often and frequently as needed. WHI (b) (6), (b) (7)(C) explained to the three that what may be a reasonable amount of time for one employee may not be enough for another; therefore, each person will vary with the amount of time needed to express. WHI (b) (6), (b) (7)(C) explained that the time that employees need for expressing breast milk does not need to be compensated however, they do need to be compensated for their normal paid breaks if they receive any. Ms. Dansour stated that with more and more employees that will be needing these accommodations, that HR has decided to make a written policy therefore all of staff will know how to handle a nursing mothers situation in the future.

Publications Provided:

HRG and Fact Sheet #73 was given to Ms. Dalton, Ms. Dansour and Ms. Culbertson. The fact sheet was explained to the three by WHI (b) (6), (b) (7)(C).

Recommendations:

(b) (7)(E) WHI (b) (6), (b) (7)(C) recommends this case be administratively closed.

All correspondence and inquiries can be addressed to:

Kristin Culbertson
Attorney, Littler Mendelson, PC
602-571-1982
2425 E. Camelback Rd Suite 900
Phoenix, AZ.

(b) (6), (b) (7)(C)

Wage and Hour Investigator

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1747918 Originating District: Seattle District Office
Local Filing Number: 2015-323-07255 Investigating District: Seattle District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 12/10/2014
Assignment Date: 12/10/2014

Employer Information

Trade Name: Providence Health & Services - Alaska
Address: 3200 Providence Dr

Anchorage, AK99507

Legal Name: Providence Health and Services -
EIN: 92-0174248
County: Anchorage
NAICS Code: 62211
No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 04/01/2014 BNPI:
To: 03/01/2015 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☐
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

FMLA NM (b) (7)(E) - Enterprise Coverage 3(s)(1)(B)- Hospital which is a Named enterprise. (b) (7)(E) Telephonic FC with Mark Davenport, Sr. Strategic Partner, HR and WHI (b) (6), (b) (7)(C) ER agreed to Future Compliance. Pubs - HRG, FS44 and FS 73.

Recommend the case be administratively closed

WHI Signature: _____ Date: 03/06/2015

Reviewed By: _____ Date: _____

Providence Health & Services-Washington
dba/Providence Health & Services-Alaska
3200 Providence Drive
Anchorage, AK 99508
Contact: Mark Davenport
(907) 212-6385
EIN: 92-0174248
Case ID: 1747918

Fair Labor Standards Act Nursing Mothers

This investigation was initiated (b) (7)(E) (b) (6), (b) (7)(C) (b) (7)(E) the employer was not allowing nursing mothers to express milk when needed and they were not providing a suitable space for the nursing mothers to express their milk. (b) (6), (b) (7) had been interrupted while expressing milk in the provided location. Because of this, (b) (6), (b) (7) routinely would express milk in the shower stall of the staff locker room.

(b) (7)(E) and the company agreed to ensure that the Nursing Mothers were provided information on the locations specifically set up for them to use.

The investigation was limited to the nursing mother's provision of Section 7 under the FLSA.

Prior Investigative History

There have been several prior investigation of this establishment. In Washington and Alaska, there has been a total of 26 investigations, 15 of which had no violations. (Exhibits E-12 through E-26) Listed below are the investigations that found violations:

Case ID: 1526769. FMLA (b) (7)(E) Equivalent Position/Termination. BW in the amount of \$14,106.96. ER ATFC and ATP (Exhibit E-1)
Case ID: 1071528 FMLA (b) (7)(E) Termination. EE restored to position (Exhibit E-2)
Case ID: 1420492. FMLA (b) (7)(E) Disciplinary Action. Personnel File Cleared of Adverse Information. (Exhibit E-3)
Case ID: 1559512. FMLA (b) (7)(E) Disciplinary Action. Adverse action removed from

Personnel File. (Exhibit E-4)

Case ID: 1515725. FMLA (b) (7)(E) Failure of ER to provide written notice. (Exhibit E-5)

Case ID: 194941 – Child Labor. OT Violation. BW in the amount of \$24,591.00 for 18 ee's.

ER ATFC and ATP. (Exhibit E-6)

Case ID: 1397653 – FLSA (b) (7)(E) OT Violation. BW in the amount of \$7,823.13 for 38 ee's.

ER ATFC and ATP. (Exhibit E-7)

Case ID: 1419120 – FLSA (b) (7)(E) OT Violation. BW in the amount of \$1,101.34 for 10 ee's.

ER ATFC and ATP. (Exhibit E-8)

Case ID: 1419396 – FLSA (b) (7)(E) OT Violation. BW in the amount of \$11,067.07 for 53

ee's. ER ATFC and ATP. (Exhibit E-9)

Case ID: 1420844 – FLSA (b) (7)(E) OT Violation. BW in the amount of \$34,949.82 for 193

ee's. ER ATFC and ATP. (Exhibit E-10)

Case ID: 1427925 – FLSA (b) (7)(E) OT Violation. BW in the amount of \$49,931.75 for 315

ee's. ER ATFC and ATP. (Exhibit E-11)

MODO

The Corporate Office is located in Renton, WA. The Seattle DO is the MODO for this employer. (Exhibit D-1 and D-2)

Coverage

Providence Health & Services-Washington, dba/Providence Health & Services-Alaska is a not for profit Catholic Health Care System. The corporate office is located at 18014 Lind Avenue SW, Renton, WA 98057. The business operates in Alaska, California, Montana, Oregon and Washington. They operate 34 hospitals, 475 physicians' clinics, 22 long term care facilities, 19 hospice and home health programs and have 693 supportive housing units in 14 locations. (Exhibit C-1 and D-7)

In Alaska they have Hospitals in Anchorage, Kodiak, Seward and Valdez. (Exhibits C-1 and D-7)

The company employs in excess of (b) (4) employees engaged in interstate commerce and had a net income of (b) (4). (Exhibit D-7) As a Hospital, the employer is a named

enterprise and therefore all employees are covered under §3(s)(1)(B) of the FLSA on an enterprise basis. Since there are more than 50 employees, the coverage includes §207(r); the nursing mothers provision of the FLSA.

The current investigation is limited to §207(r) of the FLSA and (b) (6), (b) (7)(C) in question is a non-exempt employee covered by §207(r). The investigation is limited to Providence Alaska Medical Center, which is located in Anchorage, AK.

The present investigation covers the period April 1, 2014 through March 1, 2015.

Exemptions

No Applicable. None of the current Nursing Mothers are exempt from Overtime.

Status of Compliance

207(r)(1)(A) – Failure to provide adequate break time (frequency, duration, or complete denial): No Violations found. Once the employees notify the employer of the need to express milk, the Charge Nurse will find another employee that is qualified to take over the patient care for the Nursing Mother. At times, this can take up to 15 minutes based on current staffing and patient needs. However, the Nursing Mother is never denied the opportunity to express milk.

A subsequent email received from a Nursing Mother, (b) (6), (b) (7)(C) advised that (b) (6), (b) (7)(C) Supervisor was questioning the time (b) (6), (b) (7)(C) expresses milk and were asking other employees. (Exhibit D-4) However, (b) (6), (b) (7)(C) was allowed to express the milk.

In November 2014 the HR Director, Mark Davenport, held a meeting with the Nursing Mothers, at their request, to discuss the availability of rooms and timing of the breaks. During the meeting, they advised the Nursing Mothers and soon to be Nursing Mothers, that they could use their scheduled breaks and 30 minute lunches to express milk, but did not limit them strictly to these times, as (b) (7)(E) (b) (6), (b) (7)(C) advised that during a 10 hours shift, it was necessary to express milk a minimum of 3 times. (Exhibit B-2) WHI spoke with a second Nursing Mother, who confirmed the implementation of the new policy. (Exhibit B-1)

207(r)(1)(B)- Failure to provide functional space (bathroom not permissible, space not free from intrusion, not shielded from view): Violations found. (b) (6), (b) (7)(C) does not have a private space where (b) (6), (b) (7)(C) can express (b) (6), (b) (7)(C) milk free from intrusion. The company has provided an office for the use of nursing mothers, but it is not free from intrusion and not always available. (Exhibit B-1 and B-2)

(b) (6), (b) (7)(C) stated that the employer gave nursing mothers access to an office that was located in another section of the hospital. However, it was a working office, so if it was in use or needed by a member of the staff, they would enter the space. (b) (6), (b) (7)(C) further stated that they were not allowed to post a sign that indicated the office was in use and not to enter. In addition, (b) (6), (b) (7)(C) advised that if someone did enter the room while milk was being expressed, they would be in full view of anyone near the door, both staff and the public. Because of this, (b) (6), (b) (7)(C) began expressing milk in the Shower Stall, because it afforded more privacy. (Exhibits B-1 and B-2)

The investigation revealed that the hospital has 5 or 6 rooms set up throughout the hospital specifically for Nursing Mothers. The closest room to (b) (6), (b) (7)(C) work area is located in the Mother Baby section of the hospital, and that it would take approximately 2 minutes to get to the room. Since the Nursing Mothers felt that this was too great of distance, the employer made another area available to the Nursing Mothers. The new area was an existing office space that is used by various individuals and not specific to the Nursing Mothers. Once they were made aware that a Nursing Mother had been interrupted, they initiated changes for the rooms use. They placed the key to the door at the desk that is located outside the room and the Nursing Mothers would then obtain the key from the staff at the desk. In addition, they created signage that the Nursing Mothers could place on both doors to advise anyone wanting to access the office that it was In Use.

WHI (b) (6), (b) (7)(C) also spoke with Michelle Courtney-Curtis, the Clinical Operations Manager of the OR, and the immediate supervisor of the Nursing Mothers in the Surgical Unit. Ms. Courtney-Curtis stated that even though they have specific rooms set up for the Nursing Mothers to express milk, they are still utilizing the Shower Stall in the Women's Locker Room. Ms. Courtney- Curtis stated that she asked one of the nursing mothers why (b) (6), (b) (7)(C) was using the shower stall and was told that it was quicker that using one of the other available rooms. (Exhibit B-3)

207(r)(2) – Compensation for break time: No violations found. The employer paid (b) (6), (b) (7)(C) for all time expressing milk that occurred on a scheduled break. If (b) (6), (b) (7)(C) expressed milk during (b) (6), (b) (7)(C) meal period, the time was not paid. Also, any time milk was expressed that was not during a scheduled break, the employee would clock off and then clock on when finished. (Exhibit B-1 and B-2)

207(r)(3) – Undue Hardship: No violations. The employer has hundreds of employees at or near the location where the employee works and made no objection to its obligation to comply with the law.

Disposition

WHI (b) (6), (b) (7)(C) conducted a final conference via telephone on March 6, 2015. The conference was attended by Mark Davenport, SR Strategic Partner and WHI. WHI (b) (6), (b) (7)(C) explained the requirement of the Nursing Mothers Regulation and the hospitals obligation to do the following:

1. Provide adequate break time
2. Provide adequate space free from intrusion and shielded from view
3. Compensation for Break time, when applicable

Mr. Davenport advised that they have complied with the requirement to provide time and space for the nursing mothers. With regards to the time, it may not be immediate since they have to find a qualified individual to cover for the nursing mother, but, no nursing mother has been denied the opportunity to express milk. In addition, he stated that they created another room for use, once the nursing mothers voiced concerns about the location of the existing room. With regards to this office, once they were notified that a nursing mother had been interrupted, they initiated changes to the room by providing signage and key control. He further advised that the employees are continuing to use the shower stalls on their own because they believe it is faster and more convenient.

With regards to the Front Line Supervisors questioning the Nursing Mothers on the number of times they express milk and the length of time spent by them, Mr. Davenport stated that he was not aware that there were problems in this area. He stated that no employees had come to HR

to report such a problem, or utilize any of the established methods to file a complaint or address their concern. He stated that he will create training for all supervisors to ensure that they are aware of the Hospital's Policies and Procedures and the regulations regarding Nursing Mothers to ensure that they are all aware of the requirements and what is expected.

Mr. Davenport agreed to Future and Continued Compliance.

Publications Provided

Fact sheets 44, 73, HRG

Recommendation

Recommend close administratively (b) (7)(E) .

Further Correspondence

Providence Health and Services
dba/Providence Alaska Medical Center
Attn: Mark Davenport, Sr. Strategic Partner
3200 Providence Drive, Suite C-525
Anchorage, AK 99508

WHI (b) (6), (b) (7)(C)

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1751164 Originating District: Minneapolis MN District Office
Local Filing Number: 2015-250-08581 Investigating District: Minneapolis MN District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 01/26/2015
Assignment Date: 01/26/2015

Employer Information

Trade Name: Jo-Ann Fabrics Legal Name: Jo-Ann Stores LLC
Address: 160 Tyler Road North EIN: 34-0720629
County: Goodhue
NAICS Code: 453998
Red Wing, MN55066 No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 02/13/2013 BNPI:
To: 02/12/2015 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1787369 Originating District: Phoenix District Office
Local Filing Number: 2016-279-10324 Investigating District: Phoenix District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 03/21/2016
Assignment Date: 03/21/2016

Employer Information

Trade Name: Arizona Center for Chest Diseases
Address: 5090 N 40th St

Phoenix, AZ 85018

Legal Name: Arizona Center for Chest Diseases, LTD
EIN: EIN Missing
County: Maricopa
NAICS Code: 621111
No. Of Employees: (b) (7)(C)

Investigation Information

Period Investigated From: 06/05/2014 BNPI:
To: 06/04/2016 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Compliance (no violations found) Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

12.25Hrs. Sect3(s)(1)(A) ent cov, primary care Dr. office in Phoenix, AZ. ER allowed nursing mothers reasonable amount of break time and permissible location that was shielded from view and free from intrusion. No violation found under FLSNM. Rec. Adm Close

WHI Signature: _____ Date: 06/08/2016

Reviewed By: _____ Date: _____

Arizona Center for Chest Diseases, LTD
5090 North 40th St #122
Phoenix, AZ 85018
Phone: 602-264-5685

Contact:

Diane Carl, Office Manager

FLSA

Break Time for Nursing Mothers Narrative

Coverage

Subject firm provides primary medical care to adults. The firm was incorporated in 1971. Annual dollar volume for the previous two years exceeded \$500,000 per year according to Diane Carl, Office Manager (exhibit c). Employees regularly handle medical instruments that have moved through interstate commerce. All employees are subject to enterprise coverage.

This was a limited to onsite investigation of FLSA Nursing Mothers. Period of investigation was January 1, 2015 to August 31, 2015.

Exemptions

Section 2 13(a) 1 exemption is applicable to:

Cameron Dick	Owner	541.100
Sunil Santhanakrishnan	Owner	541.100
Grigory Horoneko Jr.	Owner	541.100

No other exemptions reviewed or tested due to the investigation limited to FLSNM.

Status of Compliance

History: None

MODO: Phoenix, AZ

(b) (7)(E) data: (b) (7)(E) (b) (6), (b) (7)(C) (b) (7)(E) (b) (6), (b) (7)(E) worked for

Arizona Center for Chest Diseases in Phoenix, AZ as a Medical Assistant. (b) (6), (b) (7)(E) was being discriminated against for needing to take breaks to express milk for (b) (6), new born baby. (b) (6), (b) (7)(C) (b) (7)(E) was that the Diane Carl, Office Manager, stated she was going to stop allowing (b) (6), to take breaks to express milk. (b) (6), (b) (7)(C) stated that due to the discrimination it forced (b) (6), out of (b) (6), employment. (b) (7)(E). Investigation revealed that the employer met all of the Fair Labor Standards Act requirements under Break Time for Nursing Mothers.

Section 7(r)(1): No violation identified

Disposition

On 06/07/2016, WHI (b) (6), (b) (7)(C) met with Diane Carl, Office Manager to discuss Break Time for Nursing Mothers under Fair Labor Standards Act and (b) (7)(E) (b) (6), (b) (7)(C). After discussing enterprise and individual coverage with Ms. Carl, she confirmed Arizona Center for Chest Diseases exceeded the requirement of having an annual dollar volume more than \$500,000. WHI (b) (6), (b) (7)(C) explained since she was a covered employer she would need to be in compliance with the Fair Labor Standards Act. WHI (b) (6), (b) (7)(C) briefly explained the requirements of the act and the requirements of Break Time for Nursing Mothers.

Ms. Carl indicated that during the time that (b) (6), (b) (7)(C) needed to take breaks to express milk there were a total of (b) (6), employees. She stated (b) (6), (b) (7)(C) was (b) (4) of (b) (4) Medical Assistants, (b) (4) biller, (b) (4) referral coordinator, (b) (4) receptionists and an office manager. She stated that (b) (6), (b) (7)(C) gave birth (b) (6), (b) (7)(C) and in February returned to work and needed to take breaks to express milk for (b) (6), new born baby. Ms. Carl stated she had no issues letting (b) (6), take breaks, they were paid and with some coordination (b) (6), was able to get another employee to cover her position.

Ms. Carl stated that in June 2015 another employee (a receptionist) had returned to work after giving birth and also needed to take breaks to express milk. Ms. Carl stated that is when they began to have issues in regard to covering positions, as there are only (b) (6), employees total it was sometimes difficult to get an employee to cover the receptionist and medical assistant position. Ms. Carl stated it was difficult to have someone cover the Medical Assistant position because that position requires a certification to complete some duties like drawing blood. Ms. Carl stated even though it was difficult to cover the employees' duties, she never denied the employees their right to take a break to express milk. She also stated that she did not require them to clock out.

WHI (b) (6), (b) (7)(C) then took a tour of the establishment and was able to confirm that the rooms that the employees were taking their breaks in met the requirements of FLSNM. Both locations were shielded from view and had locks on them so there were no intrusions.

WHI (b) (6), (b) (7)(C) provided Fact Sheets # 73 Break Time for Nursing Mothers, # 22: Hours Worked, #77A: Prohibiting Retaliation, HRG, Regulations: 516, 541, 778, 785 and FLSA Poster

On 06/07/2016 WHI (b) (6), (b) (7)(C) spoke with (b) (6), (b) (7)(C) to inform (b) (6), (b) (7)(C) that the investigation did not reveal the employer violated Break Time for Nursing Mothers under the Fair Labor Standard Act. (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) concern was that Ms. Carl stated she would deny (b) (6), (b) (7)(C) break time to express milk. WHI (b) (6), (b) (7)(C) explained to (b) (6), (b) (7)(C) that even though Ms. Carl may have told (b) (6), (b) (7)(C) would deny (b) (6), (b) (7)(C) break time, Ms. Carl never actually denied (b) (6), (b) (7)(C) break time to express milk therefore, no violation occurred under the FLSA. (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) understood.

Recommendation

It is recommended that this case be administratively closed.

(b) (6), (b) (7)(C)

Wage & Hour Investigator

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1787666 Originating District: Sacramento District Office
Local Filing Number: 2016-302-07090 Investigating District: Sacramento District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 03/24/2016
Assignment Date: 03/24/2016

Employer Information

Trade Name: ProTransport-1 Legal Name: ProTransport-1, LLC
Address: 2700 Mercantile Drive, Ste 900 EIN: 68-0461114
County: Sacramento
NAICS Code: 621910
Rancho Cordova, CA95742 No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 03/16/2016 BNPI: 0
To: 03/28/2016 Reinvestigation: ☒
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Compliance (no violations found) Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

WHISARD Compliance Action Report

Conclusions & Recommendations:

(b) (7)(E) FLSANM. COV: FLSA 3(s)(1)(A);>\$500k&interst cmm. EX: N/A. SOC: (b) (6), (b) (7)(C) asked to exprss milk in bck of ambulnce; ER ddnt hve (b) (6), (b) (7)(C) exprss milk in amb until they cld cnfrm it ws ok, so no vios fnd. ER's policy sttd cmpny rsrves right to dny EE's req for lactatn brk if brk seriously dsrpts ops; ER gve NM brks, so no vio fnd. DISP: Amb nt functnl space fr NM. FC 04/14/16 via phone w/ Mgr Devon Luce, HR Holly Ballard, Atty Nicole Forde. ATFC & gve revised policy. ECA signed & returned. Pubs: See nar.

WHI Signature: _____ Date: 05/04/2016

Reviewed By: _____ Date: _____

ProTransport-1, LLC
dba ProTransport
EIN: 68-0461114
2700 Mercantile Drive, Suite 900
Rancho Cordova, CA 95742
Mr. Devon Luce, General Manager
(707) 822-4290

Case ID #1787666
Case File #2016-302-07090

Point of Contact:
Ms. Christie Undercoffler, Director of Benefits and Payroll
720 Portal Street
Cotati, CA 94931
(707) 992-1231

FLSA Nursing Mothers Narrative

Reason for Investigation: This limited investigation was initiated by (b) (7)(E) (b) (6), (b) (7)(C) Emergency Medical Technician (EMT) (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) returned to work (b) (6), (b) (7)(C) and was initially allowed to express milk at the Rancho Cordova and Sacramento, CA stations. (b) (6), (b) (7)(C) that the general manager told (b) (6), (b) (7)(C) to start expressing milk in the back of (b) (6), (b) (7)(C) ambulance starting on 03/25/2016.

WHI made contact with the employer on 03/24/2016. Pending the decision whether an ambulance was considered a “functional space”, the employer allowed (b) (6), (b) (7)(C) to continue to return to the stations to express milk. As such, although it was decided that the ambulance was not a functional space, no violations (b) (7)(E).

COVERAGE:

ProTransport-1, LLC dba ProTransport-1 established on September 15, 2000 and is owned and managed by PT-1 Holdings, LLC. (See Exhibit C-1) ProTransport-1 has 3 corporate offices and 12 stations with approximately (b) (4) employees, and it functions as an ambulance service provider. (See Exhibits C-1 through C-2) The Rancho Cordova, CA station (Station #414) is the subject of this investigation and has approximately (b) (4) employees. (See Exhibit C-1) General Manager Mr. Devon Luce meets the definition of an employer under Section 203(d) of the Fair Labor Standards Act because he oversees and hires and fires employees. (See Exhibits B-1 and C-1) The gross receipts (annual dollar volume) of the enterprise exceeds \$500,000 per year, and employees regularly handle goods that have traveled in interstate commerce, such as SensiCare Ice from Illinois, ambulance cots from Ohio, and EZ Glide chairs from Ohio. (See Exhibits C-3 through C-4) As such, the firm is enterprise covered under Section

203(s)(1)(A) of the Fair Labor Standards Act (FLSA).

Period of Investigation: 03/16/2016 to 03/28/2016.

Prior History: This is the first investigation of the subject location in Rancho Cordova, CA. ProTransport-1 as an enterprise had one prior investigation by the Wage & Hour Division. No violations were disclosed. *(See Exhibit D-8)*

MODO: San Francisco, CA District Office. ProTransport-1's headquarters are located at 720, 566, and 706 Portal Street in Cotati, CA. *(See Exhibits C-1 through C-2)* (b) (7)(E)

(b) (7)(E) *(See MODO ID #41475 and Exhibit D-9)*

EXEMPTIONS:

None claimed. (b) (6), (b) (7)(C) is an hourly, non-exempt employee and is subject to Section 207 of the Act. *(See Exhibits B-1 and C-1)* (b) (6), (b) (7)(C) is therefore entitled to protection under the nursing mother provisions of Section 207(r).

STATUS OF COMPLIANCE:

(b) (6), (b) (7)(C) (b) (7)(E) (b) (6), (b) (7)(C) is a nursing mother who needs to express milk for (b) (6), (b) (7)(C) child. It is less than 1 year after the child's birth. *(See Exhibit B-1)*

Section 207(r)(1)(A) & (B) – Reasonable Break Time & Place, Other than a Bathroom, Shielded from View and Free from Intrusion: No violation found.

(b) (6), (b) (7)(C) is an EMT-Basic whose primary station is in Rancho Cordova, CA. (b) (6), (b) (7)(C) regular duties involve driving an ambulance with a partner to and from various locations to perform typically nonemergency, inter-facility transfers. *(See Exhibits B-1 and C-1)*

Regarding the provision of reasonable break time:

The employer's "Lactation Accommodation" policy dated 03/21/2016 read, in part, "The company reserves the right to deny an employee's request for a lactation break if the additional break time will seriously disrupt operations."

The employer had more than 50 employees and could not claim an "undue hardship" per Section 207(r). Per a discussion with the employer and (b) (6), (b) (7)(C) no violations occurred as a result of this wording. *(See Exhibit D-2)*

Regarding the provision of a functional space:

(b) (6), (b) (7)(C) returned to work and told ProTransport-1 (b) (6), (b) (7)(C) needed a place to express milk. ProTransport-1 initially allowed (b) (6), (b) (7)(C) to return to the Rancho Cordova and Sacramento stations to express milk. Per the employer, “we realized that we might not be able to put (b) (6), (b) (7)(C) on a lot of calls and [were] trying to see what we could do.” (See Exhibits B-1 and C-1)

On 03/24/2016, General Manager Mr. Devon Luce and corporate office Human Resources (HR) representatives (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) spoke to (b) (6), (b) (7)(C) about using the back of an ambulance as a space to express milk. Mr. Luce modified the ambulance to allow it to be shielded from view and free from intrusion. (See Exhibits B-1 and C-1)

On 03/24/2016, (b) (6), (b) (7)(C) (b) (7)(E) WHI spoke with Mr. Luce and (b) (6), (b) (7)(C). Pending a review of the situation, ProTransport-1 continued to allow (b) (6), (b) (7)(C) to return to the stations to express milk. (See Case Diary)

On 03/28/2016, an initial conference was held at the Rancho Cordova, CA station. The employer stated that they had considered finding an office position for (b) (6), (b) (7)(C), contacting client hospitals to ask about nursing mother facilities, and providing (b) (6), (b) (7)(C) with a tent but that these were not feasible options. The employer also provided a printout of an online article discussing EMTs as nursing mothers and stated that Cal/OSHA had no issues with a nursing mother expressing breastmilk in an ambulance. WHI viewed the station room provided to (b) (6), (b) (7)(C) to express milk and confirmed it was a functional and private space. The employer showed WHI (b) (6), (b) (7)(C) ambulance, which had outlets for a pump and an interior that could be made private and free from intrusion as necessary. (See Exhibit B-1, C-1, and D-3 through D-4)

Between 03/24/2016 and 03/30/2016, (b) (6), (b) (7)(C) provided WHI with a screenshot of OSHA's website regarding food in an ambulance cab, ProTransport-1's policies, and (b) (6), (b) (7)(C) concerns about contagions in the ambulance. (See Exhibits B-1, C-1, and D-7)

(b) (7)(E) the ambulance was not considered a functional space to express milk for the following reasons:

- **Health and Sanitation Concerns:**
- Per the employer, EMTs must wipe down equipment in the ambulance with bleach wipes and Cavicide (disinfectant spray) after each call. About once a month, the ambulance is “deep cleaned”. The ambulance also has a button that will vent inside air outside.
- Per (b) (6), (b) (7)(C), the chemicals are potentially harmful. (b) (6), (b) (7)(C) stated that there were instances when (b) (6), (b) (7)(C) transported patients with highly contagious diseases that could only be killed with bleach and the ambulance

was out of bleach. *(See Exhibit D-7-g)*

- **Policies:**

- (b) (6), (b) (7)(C) provided an excerpt from the federal OSHA website stating,

Employees are allowed to eat and drink in an ambulance cab only if the employer has implemented procedures to permit employees to wash up and change contaminated clothing before entering the ambulance cab, has prohibited the consumption, handling, storage, and transport of food and drink in the rear of the vehicle, and has procedures to ensure that patients and contaminated materials remain behind the separating partition. *(See Exhibit D-7-b)*

(b) (6), (b) (7)(C) stated that ProTransport-1 has no such policies. *(See Exhibit B-1)*

- ProTransport-1 stated that there are no policies on whether food could be eaten in the front or back of the ambulance. (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) was not sure if there were written policies restricting food. WHI's review of the provided documentation found the following statement: "Under no circumstances is any food or beverage to be transported, stored, or consumed in the patient compartment of the ambulance by an employee." *(See Exhibit D-7-j)*
- **Other:**
- 75 FR 80076 does not require that employer's provide a place for a nursing mother to wash her pump; however, it states that this is an "additional feature". The fact that the ambulance has no such place was also taken into consideration.

DISPOSITION:

On 04/14/2016, a final conference was held at the Rancho Cordova, CA establishment. Present on behalf of the employer were Human Resources Director Ms. Holly Ballard, General Manager Mr. Devon Luce, and Attorney Ms. Nicole Forde of Jackson Lewis P.C. Present on behalf of the Department was the WHI. Final conference notes were taken. *(See Exhibit D-10)*

WHI discussed the employer's responsibilities under the FLSA Nursing Mother provisions and the findings of the investigation as it related to the complainant. The employer agreed to comply.

Regarding the "Lactation Accommodation" policy, the employer stated that they removed the sentence in question. A revised copy of the policy was provided. *(See Exhibit D-11)*

WHI stated that an ambulance was not a functional space for nursing mothers to express milk and discussed alternatives, such as directing EMTs to locations with nursing mother facilities. The employer agreed to comply and stated that other supervisors at other locations would be informed of this. In addition, the employer stated that they would speak to another nursing mother employee and inform (b) (6), (b) (7)(C) of (b) (6), (b) (7)(C) rights.

An Enhanced Compliance Agreement was provided to the employer and signed by Ms. Ballard.

On 04/15/2016, a Bay Area-stationed, ProTransport-1 EMT sent WHI an email regarding (b) (6), (b) (7)(C) rights as a nursing mother. (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) had been pumping milk in the back of an ambulance. *(See Exhibit D-12)* WHI attempted to contact this employee between 04/18/2016 and 04/21/2016. On 04/21/2016, WHI spoke with this employee and discussed the nursing mother provisions. (b) (6), (b) (7)(C) stated the following:

- The issue has been resolved. (b) (6), (b) (7)(C) was recently contacted by HR and asked if (b) (6), (b) (7)(C) wanted to continue to express milk in the back of an ambulance. (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) did not want to and was told (b) (6), (b) (7)(C) no longer had to do so.
- (b) (6), (b) (7)(C) was allowed to go home to express milk. HR also provided dispatch with a nursing mothers app. When (b) (6), (b) (7)(C) is in the field, this app will allow dispatch to direct (b) (6), (b) (7)(C) to the nearest locations with nursing mother facilities.
- (b) (6), (b) (7)(C) would contact WHI with any future questions or if any future issues occurred.

(b) (6), (b) (7)(C) Notification:

(b) (6), (b) (7)(C) was notified of the results of the investigation on 04/14/2016 via telephone.

Publications:

HRG and Fact Sheets #28D, 44, 73, and 77A were provided to Director of Benefits and Payroll Ms. Christie Undercoffler via email on 03/24/2016. HRG and Fact Sheets #28D, 44, 73, and 77A were provided on 03/28/2016 to Ms. Holly Ballard, Mr. Devon Luce, Mr. David Ott, and Ms. Nicole Forde at the establishment.

The following publications were provided to Ms. Holly Ballard, Mr. Devon Luce, and Ms. Nicole Forde on 04/14/2016: Fact Sheets #13, 14, 17A, 21, 22, 23, 28, 28D, 43, and 73. The employer was also referred to the FLSA and Federal Register on www.dol.gov/whd.

Recommendation:

It is recommended that the case be closed with no further action.

(b) (6), (b) (7)(C)

Wage & Hour Investigator

05/04/2016

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1787742 Originating District: Honolulu District Office
Local Filing Number: 2016-198-01677 Investigating District: Honolulu District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 03/24/2016
Assignment Date: 03/24/2016

Employer Information

Trade Name: LaoLao Bay Golf & Resort Legal Name: Saipan Laulau Development Inc.
Address: PMB 1020 PPP, P. O. Box 10000 EIN: 66-0460289
County: Saipan
NAICS Code: 721110
Saipan, MP96950 No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 01/26/2015 BNPI:
To: 03/30/2016 Reinvestigation: ☒
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Full Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

FMLA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FMLA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

Coverage - 203(s)(1)(A)(ii); Exemption - None tested; Status of Compliance - violation under Sec 207. The firm failed to provide a place for its nursing mother to express ^{(b) (6)} breast milk. Disposition - FC with firm on 04/15/16. The firm agreed to comply in the future. Recommend case be administratively closed.

WHI Signature: _____ Date: 04/17/2016

Reviewed By: _____ Date: _____

Saipan Laulau Development Inc.
LaoLao Bay Golf & Resort
PMB 1020 PPP, P. O. Box 10000,
Saipan, MP 96950
Phone: 670-236-8888
Fax: 670-236-8880

Case File#: 1787742
EIN #: 66-0460289

FLSA NARRATIVE

COVERAGE

Reason for Investigation: The investigation was initiated (b) (7)(E) (b) (6), (b) (7)(C) the firm failed to provide (b) (6), (b) (7)(C), who works at the firm, a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, for (b) (6), (b) (7)(C) to express breast milk (see (b) (7)(E) Forms).

Prior History: This is the third investigation conducted on the firm.

The firm was previously investigated by WHI (b) (6), (b) (7)(C) in October 2010 and the period of the investigation was from October 27, 2008 to October 26, 2010. The violations were as follows: Minimum wage and overtime violations occurred when the firm failed to pay its employees at least the federal minimum wage and proper overtime compensation for all hours, including pre-, post-shift hours and meal breaks worked. The firm had agreed to pay back wages of \$10,010.60 and agreed to future compliance. This was a non-litigation administrative settlement (see Exhibit D-2).

The firm was also previously investigated by WHI (b) (6), (b) (7)(C) in January 2015 and the period of the investigation was from January 26, 2013 to January 25, 2015. The violations were as follows: Minimum wage and overtime violations occurred when the firm failed to pay its employees for the time they attended the food handler seminar. The firm had agreed to pay back wages of \$1,496.74 and agreed to future compliance. This was a non-litigation administrative settlement (see Exhibit D-3).

MODO Information: The main office of the subject firm is located within the jurisdiction of the Honolulu District Office. The firm has only one establishment and is therefore not part of a larger enterprise. Therefore, the MODO protocols are not applicable (see Exhibit C-1).

Nature of Business: The firm is engaged in the golf course/hotel business (see Exhibit C-1). It was incorporated on Saipan on October 19, 1989 (see Exhibit C-2). Chang Ho Kim is the President. Daewoo Engineering & Construction, Ltd. Owns 100% of the company (see Exhibit C-3).

Section 203(d) Employer: The firm's president, Chang Ho Kim hires and fires employees, directs their daily work, and otherwise acts in the direct interest of the corporate entity in relation to its employees. Therefore, they are the Section 3(d) employers under the Act (see Exhibits B-1 to B-4).

Annual Dollar Volume:

The ADV of the last three years is as follows:

2013

2014

2015

(b) (4)

(see Exhibits C-4 to C-6)

Number of Employees: The firm employs an average workforce of (b) (4) employees (see Exhibit C-1).

Interstate Commerce: The employees handle goods or products that have moved through interstate commerce such as Nike brand golf clubs and Ez-go brand electric golf carts manufactured in the U.S. Mainland (see Exhibit C-1).

Enterprise Coverage: Sec. 3(s)(1)(A)(ii): Enterprise coverage has been established as the firm's ADV exceeded \$500K during the investigation period and at least two full time employees handled goods that moved through interstate commerce.

Period of Investigation: January 26, 2015 to March 30, 2016.

Investigation Tool: Full investigation.

EXEMPTIONS

Section 213(a)(1): The firm has claimed (b) (4) employees to be exempt from the overtime provision of the Act during the investigative period (see Exhibits D-1). The lowest annual salary was (b) (4) (see Exhibit D-1). The exemptions of these employees were not tested.

CFR 541 was discussed and provided to the firm for reference.

STATUS OF COMPLIANCE

Investigative Result of (b) (6), (b) (7)(C), (b) (7)(E), (b) (6), (b) (7)(C), (b) (7)(E) the firm's failure to provide (b) (6), (b) (7)(C), a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, for (b) (6), (b) (7)(C) to express breast milk (b) (7)(E)
[REDACTED]

Upon (b) (6), (b) (7)(C) return from (b) (6), (b) (7)(C) maternity leave, the firm advised (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) could use the employee's break room to express breast milk. However, (b) (6), (b) (7)(C) did not feel comfortable in using the employee's break room and decided to use the handicap restroom (see Exhibit B-4). Other than (b) (6), (b) (7)(C) one-hour lunch break, (b) (6), (b) (7)(C) takes two fifteen to twenty-minute paid breaks to express breast milk.

Profile Pay Period: March 7, 2016 to March 20, 2016 (see Exhibit D-1).

Section 206 (MW): Payroll and time record review and employee interviews revealed that the firm pays its employees in compliance with this Section (see Exhibits A-1 & B-1 to B-4).

Section 207 (OT): Payroll and time record review and employee interviews revealed that the firm pays its employees in compliance with this Section (see Exhibits A-1 & B-1 to B-4).

Section 207 (Break Time for Nursing Mothers): During the investigation, the firm made clear that if

(b) (6), (b) (7)(C) did not want to express breast milk in the employee's break room, a hotel guest room would be provided to (b) (6), (b) (7)(C) for this purpose. The firm is in compliance with this Section.

Other than (b) (6), (b) (7)(C), the firm has one expecting employee (see Exhibit B-4). The firm agreed to continue with its compliance with this Section.

Section 211 (RK): WHI reviewed the firm's payroll and time records for the period of the investigation and found no apparent violation. The firm is in compliance with this Section (see Exhibits A-1 & B-1 to B-4).

Section 212 (CL): The firm did not employ minors during the investigative period. The firm is in compliance with this Section (see Exhibits B-1 to B-4 & C-1).

FMLA: The firm employed over 50 employees during 20 or more calendar workweeks in either the current or preceding calendar year (see CFR 825.104(a) and Sec 101(2)(B)(ii)). Therefore, the FMLA applies to the firm (see Exhibits C-1 & D-1). The firm has displayed the FMLA poster as required by the Act. The firm is in compliance with this Section (see Exhibit C-1).

The Employer's FMLA Policy Review:

As seen in exhibit D-4, the firm's FMLA policy failed to include "For incapacity due to pregnancy, prenatal medical care or childbirth" as one of the basic leave entitlements. However, the firm agreed to update its policy immediately. Fact Sheet #28 & #28d were provided to the agency.

DISPOSITION

The final conference was held on April 15, 2015 at the firm's establishment on Saipan. Present were the firm's president, Chang Ho Kim, the general manager/CFO, Hyung Jin Kim, the HR assistant, Nadia Camacho, the chief accountant, Maria Beltran, the accountant, Edith Moresco and WH Investigator (b) (6), (b) (7)(C)

The investigative process and findings were discussed with the firm. The firm was advised of enterprise coverage. Specifically, Section 206, Section 207, Section 211, Section 212 and Section 216(e) of the

FLSA were discussed in detail.

Regarding Section 207 (Break Time for Nursing Mothers): The firm was advised to provide reasonable break time, as needed, and a space, which meets the requirement as “a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public,” should its employees have the need to express breast milk.

Fact Sheet #73 was provided to the firm for reference. WHI recommended the firm to display the FLSNM Fact Sheet #73 as a “Poster” in the congregation points of the workers.

Firm's Response and Remedy for Immediate and Future Compliance: Mr. Kim responded by stating that the firm will continue with its compliance with the Regulation. The firm also agreed to display the FLSNM Fact Sheet #73 as a “Poster” in the congregation points of the workers.

Regarding Section 216(c) & 216(e): The firm was advised of the potential assessment of CMPs for future violations. WHI stressed the importance of maintaining compliance. (b) (7)(E)

The firm was provided with CFR 578 and 580 as noted below.

Firm's Response Mr. Kim stated that the firm will try its best to maintain compliance with the Fair Labor Standards Act in the future.

Recommendation: (b) (7)(E) WH Investigator (b) (6), (b) (7)(C) recommends the case to be administratively closed (b) (7)(E)

(b) (6), (b) (7)(C) **Notification** (b) (6), (b) (7)(C) was advised of the investigative result on April 18, 2016 (see diary sheet).

Publications Provided: HRG FLSA; Fact Sheet #28, #28d, #44, #73, #77a; CFR 541, 578, 580; and Wage Hour website.

Prepared and Submitted by:

(b) (6), (b) (7)(C)
Wage Hour Investigator
Saipan Office

April 18, 2015

ADDENDUM

The addendum to this narrative report was prepared and submitted on April 27, 2016.

Although the firm provided paid break time and the employee's breakroom for (b) (6), (b) (7)(C) to express breast milk initially, it failed to prevent (b) (6), (b) (7)(C) from having to express breast milk in the handicap restroom. Per discussion with ADD Candoleta, a violation for break-time-for-nursing-mother provision is assessed. The firm was advised of the same on April 27, 2016.

Prepared and Submitted by:

(b) (6), (b) (7)(C)
Wage Hour Investigator
Saipan Office

April 27, 2016

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1803290 Originating District: Phoenix District Office
Local Filing Number: 2017-279-10556 Investigating District: Phoenix District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 10/04/2016
Assignment Date: 10/04/2016

Employer Information

Trade Name: Premier Precision Group

Legal Name: Premier Precision Group LLC

Address: 2362 W. Shangri-LA Rd.

EIN: 20-3424255

County: Maricopa

NAICS Code: 332721

Phoenix, AZ85029

No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 09/22/2016

BNPI:

To: 01/09/2017

Reinvestigation: ☐

Investigation Type: (b) (7)(E)

Recurring Violation: ☐

Investigation Tool: Limited Investigation

Future Compliance Agreed: ☐

Compliance Status: Agree to Comply

Involved in AG: ☐

Recommended Action:

BWFS: ☐

RO/NO Review: ☐

CMP: ☐

Follow Up Investigation: ☐

Litigation: ☐

Other Action: ☐

Civil Action: ☐

Denial of Future Certificate: ☐

Criminal Action: ☐

BW Payment Deadline: 02/10/2017

Submit For Opinion: ☐

Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
No Violation found for this act / Compliance (no violations found)					\$0.00	\$0.00	

WHISARD Compliance Action Report

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
Failure to provide reasonable break time / Agree to Comply	1	0	\$0.00	\$0.00	\$0.00	\$0.00	
Failure to provide adequate space / Agree to Comply	1	0	\$0.00	\$0.00	\$0.00	\$0.00	
Retaliation / Agree to Comply	1	1	\$2,691.00	\$2,691.00	\$0.00	\$0.00	
FLSNM Totals:	1	1	\$2,691.00	\$2,691.00	\$0.00	\$0.00	
Total Violations Under FLSNM:	3						\$0.00

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	1	Unduplicated Employees Agreed:	1
Total Amount BWs Computed:	\$2,691.00	Total Amount BWs Agreed:	\$2,691.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

35.5 hrs. FLSNM (b) (7)(E) based invest. (b) (7)(E) claimed no reasonable break time or place to pump. (b) (6), (b) (7)(E) was placed in a restroom. (b) (6), (b) (7)(E) was then terminated in retaliation for asserting (b) (6), (b) (7)(E) rights. (b) (7)(E) ER ATC/ATP \$2691.00 to (b) (6), (b) (7)(C). Recommend case be administratively closed upon proof of payment.

WHI Signature: _____ Date: 02/07/2017

Reviewed By: _____ Date: _____

Premier Precision Group LLC
dba: Premier Precision Group
2362 W. Shangri-La Rd.
Phoenix, AZ 85029
(602)254-2187
EIN: 20-3424255
Case ID: 1803290

Point of Contact: Steven Murray
Operations Manager at Spell Capital
Steve@spellcapital.com
Office: 612-371-9650 Cell: 612-396-2458
222 South Ninth St, Suite 2880
Minneapolis, MN 55402

FLSANM Narrative

COVERAGE:

Subject firm is a contract manufacturer specializing in precision machining and fabrication of complex metal components for airplanes (Exhibit C-1). The subject firm was incorporated in the state of Arizona on 04/17/2007 (Exhibit C-2). Spell Capital owns the assets and operates Premier Precision Group (Exhibit C-1, 3). The corporate headquarters is located at 222 South Ninth St, Suite 2880, Minneapolis, MN 55402(Exhibit C-2).

Mr. Steve Murray provided the following information on November 11, 2016: he is the Operations Manager. Mr. Steve Murray is responsible for significant decision-making including payroll decision and working conditions. Mr. Murray is the 203(d) employer (Exhibit C-1). He stated that the company

has grossed over \$500,000 for the past three years and employees regularly handle goods from out of state (Exhibit C-1). Enterprise Coverage under section 203(s) (1)(a) of the Act is applicable for this company. Warehouse employees are manufacturing and handling items which will be shipped out of state therefore they are individually covered. Further, for purposes of determining coverage under the break time requirements for nursing mothers, the subject firm employs well over 50 employees (Exhibit C-1).

This investigation is limited to FLSA Section 207(r) "Break Time for Nursing Mothers: during the period September 22, 2016 through January 09, 2017.

Exemptions:

Not applicable. (b) (6), (b) (7)(C) is a non-exempt employee paid on an hourly basis and is therefore subject to Section 7 of the FLSA and the protections of the Break Time for Nursing Mothers provision of the FLSA (Exhibit C-1).

Status of Compliance

Prior History: No prior history found in WHISARD.

MODO: Minneapolis District Office is the Main Office District Office. Spell Capital is headquartered at 222 South Ninth Street Suite 2880, Minneapolis, MN 55402. (b) (7)(E)
(Exhibit D-1).

Reason for the investigation: (b) (6), (b) (7)(C) (b) (7)(E) a violation of the Patient Protection and Affordable Care Act amendment to the FLSA (Break Time for Nursing Mothers). (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) was a Visual Inspector (b) (6), (b) (7)(C) when (b) (6), (b) (7)(C) was terminated. (b) (6), (b) (7)(C) further (b) (7)(E) Premier Precision Group violated (b) (6), (b) (7)(C) nursing mother rights by refusing to provide (b) (6), (b) (7)(C) sufficient break time to pump (b) (6), (b) (7)(C) milk, requiring (b) (6), (b) (7)(C) to pump in the bathroom, and then terminating (b) (6), (b) (7)(C) employment (See (b) (7)(E)).

(b) (7)(E) Premier Precision Group, agreed to future compliance with the Break Time for Nursing Mothers provisions. The ER agreed to pay \$2,691.00 to (b) (6), (b) (7)(C) as a result of her termination.

Timeline (Exhibit D-5, 6, 7, 8, and 12):

(b) (6), (b) (7)(C) was hired as a Visual Inspector (b) (6), (b) (7)(C) did not qualify for FMLA. (b) (6), (b) (7)(C) took maternity leave (b) (6), (b) (7)(C) got back from leave and began nursing. (b) (6) stated that (b) (6), (b) (7)(C) had notified (b) (6), (b) (7)(C) direct supervisor, (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) would need a space. (b) (6), (b) (7)(C) never heard back from (b) (6), (b) (7)(C) supervisor. (b) (6), (b) (7)(C) team lead then provided her with a room. According to Ms. Tobin she was never notified that the (b) (6), (b) (7)(C) would be pumping.

On 08/31/2016 the HR manager, Wendy Tobin, pulled (b) (6), (b) (7)(C) aside and stated that (b) (6), (b) (7)(C) was not given permission to pump in the room that (b) (6), (b) (7)(C) was using. Ms. Tobin notified (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) could either pump in (b) (6), (b) (7)(C) car or the office women's bathroom. (b) (6), (b) (7)(C) chose to use the bathroom but stated that (b) (6), (b) (7)(C) had to throw out the milk due to it being contaminated.

On 8/31/2016 (b) (6), (b) (7)(C) contacted WHD. WHD provided (b) (6), (b) (7)(C) with the nursing mother's fact sheet. On 09/05/2016 (b) (6), (b) (7)(C) provided the fact sheet to Wendy from HR and (b) (6), (b) (7)(C) supervisor (b) (6), (b) (7)(C). Wendy notified (b) (6), (b) (7)(C) that there were no other rooms available other than the rest room. According to Ms. Tobin she was never provided the fact sheet.

On 09/12/2016 (b) (6), (b) (7)(C) got pink eye. (b) (6), (b) (7)(C) supervisor (b) (6), (b) (7)(C) sent (b) (6), (b) (7)(C) home and told (b) (6), (b) (7)(C) to bring in a Doctor's note if (b) (6), (b) (7)(C) would be missing more work. On 09/14/2016 (b) (6), (b) (7)(C) returned to work with a Doctor's note stating that (b) (6), (b) (7)(C) was ready to work. (b) (6), (b) (7)(C) said that (b) (6), (b) (7)(C) wasn't ready to come back and to come back in a week. (b) (6), (b) (7)(C) returned to work on 09/21/2016.

On 09/22/2016 (b) (6), (b) (7)(C) was brought into Ms. Tobin office; also present was (b) (6), (b) (7)(C) supervisor (b) (6), (b) (7)(C) and another manager Steve. They notified (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) was terminated due to not making any improvements.

Employee Performance Reviews: On 06/16/2016 (b) (6), (b) (7)(C) received (b) (6), (b) (7)(C) annual PRE and got needs to

improve. On **08/19/2016** (b) (6), (b) (7)(C) received a second review. The review was the same as the first but with comments. It stated that (b) (6), (b) (7)(C) needed improvements in all areas and that there would be a reevaluation in 45 days. On **09/22/2016** (b) (6), (b) (7)(C) was terminated.

An initial conference was held on November 11, 2016 by WHI (b) (6), (b) (7)(C) with Mr. Steven Murray (Operations Manager) and Ms. Wendy Tobin (HR Manager). WHI asked why (b) (6), (b) (7)(C) supervisor did not notice that (b) (6), (b) (7)(C) was missing when pumping. Ms. Tobin stated it was because (b) (6), (b) (7)(C) was pumping during (b) (6), (b) (7)(C) 30 minute lunch break. ER could not provide proof that the termination process which was used with (b) (6), (b) (7)(C) has been used with other EEs. They have had other EEs who have received multiple reviews within a 3 month period but they improved therefore they were not terminated. (b) (6), (b) (7)(C) is the first EE to be terminated after the PRES. Ms. Tobin stated that she did read information about nursing mothers once the issue with (b) (6), (b) (7)(C) was presented. She had read that a restroom is not an adequate space. She stated that she did not have any other rooms. The bathroom is cleaned twice a day and can be locked from the inside. She provided (b) (6), (b) (7)(C) with a table and chair to pump (Exhibit C-1).

Section 7(R)(1)(A)-Reasonable Break Time: Violation found. Premier Precision failed to acknowledge that (b) (6), (b) (7)(C) was nursing for her first 3 months therefore not providing (b) (6), (b) (7)(C) with time or space. Therefore they were not providing (b) (6), (b) (7)(C) sufficient time to pump beyond the time designated as (b) (6), (b) (7)(C) lunch breaks (Exhibit).

Section 7(R)(1)(B)-A Place, Other than a Bathroom, Shielded from View and Free from Intrusion: Violation found. Premier Precision failed to acknowledge that (b) (6), (b) (7)(C) was nursing for (b) (6), (b) (7)(C) first 3 months therefore not providing (b) (6), (b) (7)(C) with time or space. After 3 months the ER provided (b) (6), (b) (7)(C) a bathroom as the place for (b) (6), (b) (7)(C) to express milk.

Section 15(A)(3)-Prohibiting Retaliation Under the FLSA: Violations found. (b) (6), (b) (7)(C) asserted (b) (6), (b) (7)(C) rights by requesting a place to pump that was not the bathroom. (b) (6), (b) (7)(C) provided the ER a Wage and Hour Division ("WHD") Fact Sheet on FLSNM on 09/05/2016. Then on 09/22/2016 (b) (6), (b) (7)(C) was terminated.

(b) (7)(E)

(b) (7)(E)

Exhibit D- 3). Computed back pay totaled \$4,550.00 (Exhibit A-1).

Disposition

On January 13, 2017 a final conference was held by WHI (b) (6), (b) (7)(C) and SIA Davis-Ferra with Steven Murray (Operations Manager) and Wendy Tobin (Human Resource Manager). WHI (b) (6), (b) (7)(C) went over Fact Sheet # 73 in detail. Mr. Murray and Ms. Tobin stated that they understood that they violated the provisions by placing (b) (6), (b) (7)(C) in a rest room to pump. They stated that they understood the Break Time for Nursing Mother provisions and would comply in the future.

Mr. Murray agreed to comply in the future with the following:

- 1) Comply in the future by allowing reasonable break time to nursing mothers to express milk until their child turns one year old.
- 2) They agreed to allow break time beyond paid breaks if needed and during training as well.
- 3) They agreed to provide a space that is shielded from view, free from intrusion by coworkers and the public, available to the nursing mother when needed, and not a bathroom or locker room.

WHI (b) (6), (b) (7)(C) then presented them with the back wage finding of \$4,550.00 and explained how it was computed. Although Mr. Murray agreed that the company violated the provision he does not believe they retaliated against the employee by terminating (b) (6), (b) (7)(C). Mr. Murray stated that the termination was all dependent on (b) (6), (b) (7)(C) skill level. WHI (b) (6), (b) (7)(C) and SIA Davis Ferra explained that although they may not have intended to retaliate against (b) (6), (b) (7)(C) there were aspects of retaliation. They further explained that due to (b) (6), (b) (7)(C) not being able to pump it could have affected (b) (6), (b) (7)(C) production which led to (b) (6), (b) (7)(C) termination. Mr. Murray still did not agree that (b) (6), (b) (7)(C) was retaliated against but asked for time to think about the issue and the back wages.

On January 24, 2017 WHI (b) (6), (b) (7)(C) and SIA Davis Ferra held a conversation over the phone with Mr. Steven Murray. Mr. Murray stated that he had gone through the timeline of events and still did not

agree that the company had retaliated against (b) (6), (b) (7)(C). He did find on (b) (6), (b) (7)(C) performance review the company stated that they would give (b) (6), (b) (7)(C) 45 days to improve before (b) (6), (b) (7)(C) next review but (b) (6), (b) (7)(C) was then terminated 37 days later (Exhibit D-7, 8). Mr. Murray agreed that he would pay (b) (6), (b) (7)(C) for 8 days which is the difference between 45 and 37 days (b) (7)(E) (b) (6), (b) (7)(C) WHI (b) (6), (b) (7)(C) and SIA Davis Ferra stated that the amount was low and they would have to speak to (b) (6), (b) (7)(C). In order to remedy the situation Mr. Murray agreed to pay (b) (6), (b) (7)(C) half of the original computation of \$4550 and half of \$832 which is \$2691.00. WHI (b) (6), (b) (7)(C) asked (b) (6), (b) (7)(C) if (b) (6), (b) (7)(C) would agree to accept \$2691.00, which (b) (6), (b) (7)(C) did on 01/24/2017.

Ms. Tobin stated that she would have to put (b) (6), (b) (7)(C) back on payroll in order to pay (b) (6), (b) (7)(C) and it may take a week. On 06/08/2016 Ms. Tobin stated that the check would be made on 02/10/2017 and sent to the Phoenix DO.

Recommendations

(b) (7)(E) it is recommended that the case be administratively closed.

(b) (6), (b) (7)(C) Notification

On January 24, 2017 (b) (6), (b) (7)(C) was notified of the results on the investigation.

Publications

The following publications were discussed and provided: Handy Reference Guide, Fact Sheet #44, 73 and 77A.

(b) (6), (b) (7)(C)

Wage and Hour Investigator

Premier Precision Group Case ID: 1803290

02/08/2017

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1832976 Originating District: Phoenix District Office
Local Filing Number: 2017-279-10946 Investigating District: Phoenix District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 09/18/2017
Assignment Date: 09/18/2017

Employer Information

Trade Name: Datepac West Legal Name: Datepac, LLC
Address: 2515 S. ave 2 1/2 E EIN: 71-0945153
County: Yuma
NAICS Code: 488991
Yuma, AZ85365 No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 08/01/2017 BNPI:
To: 09/29/2017 Reinvestigation: ☐
Investigation Type: (b) (7)(E) Recurring Violation: ☐
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Agree to Comply Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSA Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

Total Violations Under FLSA: 1 \$0.00

WHISARD Compliance Action Report

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	
Total Violations Under FLSNM:	2						\$0.00

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

18.5 hours. Cov applicable under 3s1a. C alleged ER was not allowing (b) (6) enough time or an adequate location to express milk. ER agreed to the violations and immediately agreed to remedy the issue. No BWs as (b) (6) was never deducted for taking breaks. (b) (6) notified of outcome on 9/28/2017. SOC: ER agreed to future compliance. Rec: admin close.

WHI Signature: _____ Date: 10/03/2017

Reviewed By: _____ Date: _____

Datepac LLC
Dba: Datepac
2515 S. Ave 2 ½ E
Yuma, AZ 85364
928-726-0901
EIN: 71-0945153
Case ID: 1832976

Point of Contact: Ana Hemmer
928-726-0901 ext 2

FLSNM Narrative

COVERAGE:

Subject firm is a packing house for various Dates. The dates are brought to the warehouse after being freshly picked. They are cleaned, sorted, packaged and then shipped to various retailers such as Costco, Walmart or Albertsons. 45% of the dates also travel to other countries such as Dubai or Australia. The subject firm was incorporated in the State of Arizona on 06/3/2003. There are 5 locations all within the State of Arizona. The corporate headquarters is located at 2515 S. Ave 2 ½ E Yuma, AZ 85364. (See exhibit C-2)

Ms. Ana Hemmer provided the following information on September 28, 2017: she is the HR Manager and is responsible for significant decision making such as company policies, payroll, hiring and ultimate terminations. Ms. Hemmer stated that the company is owned by eight different growers.

Member	Ownership %
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Nunez Date Gardens, Inc.
JRJ Partners, LLC
Stephen P. & Roberta G. Shadle Revocable Trust
Southwestern Date Growers, L.P.
Sun Garden Date Growers, LLC
Vandervoort Date Ranches, Inc.
Royal Medjool Date Gardens, LLC
Nelson Bros. Farm

(b) (4)

Ms. Hemmer stated that each warehouse location has their own Director of Operations who would be responsible for the day to day operations of the warehouse. At Datepac West, (b) (6), (b) (7)(C) would be the 203(d) employer as (b) (6) oversees the day to day operations of those employees, including hiring, disciplinary actions and setting of rates of pay or bonuses. Ms. Hemmer stated that the company has grossed approximately (b) (4) for the last three years. (Exhibit C-4). Employees regularly handle goods from out of state such as the plastic containers used for packaging the dates. Enterprise coverage under section 203(s)(1)(a) is applicable to all employees. All employees who are cleaning, sorting and/or packaging the dates are also individually covered as they are handling goods that will be shipped across state/country lines. Further, for purposes for determining coverage under the break time requirements for nursing mothers, the subject firm employs well over 50 employees. (Exhibit D-4).

This investigation is limited to FLSA Section 207(r) "Break Time for Nursing Mothers" during the period of August 1, 2017 to September 29, 2017.

EXEMPTIONS:

Not applicable. (b) (6), (b) (7)(C) is a non-exempt employee paid on an hourly basis and is therefore subject to Section 7 of the FLSA and the protections of the Break Time for Nursing Mothers provision of the FLSA (Exhibit C-1).

STATUS OF COMPLIANCE:

Prior History: None

MODO: Phoenix DO is the MODO, (b) (7)(E).

Case Status: The investigation was initiated after (b) (6), (b) (7)(C) (b) (7)(E) insufficient time to express milk and failed to provide (b) (6), (b) (7)(C) an adequate location. (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) is employed as a box maker and has been employed with the company (b) (6), (b) (7)(C) gave birth to (b) (6), (b) (7)(C) (b) (7)(E) remedied on 9/28/2017.

Timeline of Events:

(b) (6), (b) (7)(C)
(b) (6), (b) (7)(C) - hired at Datepac West. Was able to use a supervisor's office to express milk
8/30/17- moved to a new department. New Supervisor, (b) (6), (b) (7)(C) did not allow (b) (6), (b) (7)(C) to use more breaks than allowed per policy and would not allow (b) (6), (b) (7)(C) to use anything else besides a regular restroom.
9/6/2017- specifically asked for more time to express milk and was denied by (b) (6), (b) (7)(C) supervisor, (b) (6), (b) (7)(C) (b) (7)(E)

An initial conference was held on 9/28/2017 with HR Director, Ana Hemmer. Ms. Hemmer stated that (b) (6), (b) (7)(C) was the first employee the company has ever had that needed to express milk. She stated that they were unsure how to handle the situation but after receiving WHD's letter realize they were handling the policy wrong. Ms. Hemmer provided WHI (b) (6), (b) (7)(C) a copy of the company policy for Nursing Mothers and agreed to do whatever was necessary to come into compliance. WHI (b) (6), (b) (7)(C) and Ms. Hemmer drove to each warehouse location and found various locations that could be used as an acceptable and adequate space for nursing mothers to express milk privately.

Section 7(R)(1)(A)-Reasonable Break Time: Violation found. Datepac failed to allow (b) (6), (b) (7)(C) reasonable time to express milk. Ms. Hemmer acknowledged that (b) (6), (b) (7)(C) might have been told (b) (6), (b) (7)(C) was not able to use more breaks than allowed per company policy.

Section 7(R)(1)(B)-A Place, Other than a Bathroom, Shielded from View and Free from Intrusion: Violation found. Ms. Hemmer acknowledged that employees were asked to use private restrooms as written in the company handbook.

Section 15(A)(3)-Prohibiting Retaliation Under the FLSA: No violation found (b) (7)(E) (b) (6), (b) (7)(C) still currently works for the company.

DISPOSITION:

A final conference was held with HR Manager, Ana Hemmer and CPA Dean Johnson on September 29, 2017 by WHI (b) (6), (b) (7)(C). During the conference compliance was discussed specifically, the time and location requirements. WHI (b) (6), (b) (7)(C) also requested the company rewrite their company handbook to reflect that nursing mothers are able to express milk whenever and for as long as they need to in a location that is not a restroom of any kind. WHI (b) (6), (b) (7)(C) also made Ms. Hemmer a packet that had the EE Rights for Nursing Mothers and Fact Sheet # 73. Ms. Hemmer agreed to give any employee who was in Nursing Mother status and employees returning from FMLA due to a birth of a child a copy of the packet.

Recommendations

(b) (7)(E) it is recommended that the case be administratively closed.

(b) (6), (b) (7)(C)

Wage & Hour Investigator
10/3/2017

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1833068 Originating District: Los Angeles District Office
Local Filing Number: 2017-231-09233 Investigating District: Los Angeles District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 09/18/2017
Assignment Date: 10/04/2017

Employer Information

Trade Name: U.S. Postal Service - Los Angeles P&DC Legal Name: United States Postal Service
Address: 7001 S Central Avenue EIN: 41-0760000
County: Los Angeles
NAICS Code: 491110
No. Of Employees: 1000
Los Angeles, CA90052

Investigation Information

Period Investigated From: 03/22/2017 BNPI:
To: 10/12/2017 Reinvestigation: ☒
Investigation Type: (b) (7)(E) Recurring Violation: ☒
Investigation Tool: Limited Investigation Future Compliance Agreed: ☒
Compliance Status: Compliance (no violations found) Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☐ Follow Up Investigation: ☒
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: ☐
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	2	\$0.00	\$0.00	\$0.00	\$0.00	

WHISARD Compliance Action Report

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

Reinvestigation of FLSANM. Firm is US Postal Service. Enterprise Cov. est has named gov. entity. Firm violated sec7r1a and 7r1b. Firm agreed to comply. Attorney Catherine V. Meek is currently writing a nursing mothers' policy to be implemented and distributed to the establishment

WHI Signature: _____ Date: 01/02/2018

Reviewed By: _____ Date: _____

Trade Name: United States Postal Service
Legal Name: United States Postal Service
7001 S. Central Ave.
Los Angeles, CA 90052

Case ID: 1833068
Case File: 2017-231-09233
EIN: 41-0760000
Phone: (323) 586-4400

**Fair Labor Standards Act – Nursing Mothers (FLSANM)
Narrative Report**

Coverage

3(s)(1)(c): Enterprise coverage of the firm was established. The United States Postal Service (USPS) is an independent public agency.

Section 7(r)(3) Less Than 50 Employees: The firm has in excess of 50 employees and as such is subject to the nursing mothers' provisions as stated in section 7(r)(3) of the Fair Labor Standards Act (FLSA)

Reason for investigation: The case was initiated (b) (7)(E) (b) (6), (b) (7)(C) recently gave birth and states that (b) (6), (b) (7)(C) requested space from (b) (6), (b) (7)(C) employer to express (b) (6), (b) (7)(C) milk. (b) (6), (b) (7)(C) (b) (7)(E) since returning to work after giving birth, (b) (6), (b) (7)(C) and three other women have not been provided a space to express their milk. (b) (6), (b) (7)(C) (b) (7)(E) (b) (6), (b) (7)(C) and the other women requested the nursing space via a hand written letter to the human resources department (**Ex B-1**).

Period for this Investigation: This is a limited investigation of the customer care department that covers the period of March 22, 2017 to October 12, 2017. An initial conference was held October 12, 2017 at the USPS Los Angeles Processing and Distribution Center with Occupational Health Services Nurse Francis Grady and Customer Operations Support Acting Manager Beverly Balbarino (**Ex D-1**).

Nature of Business: The United States Postal Service is an independent public agency that is tasked

with delivering mail and parcel throughout the United States of America.

Business Structure: The United States Postal Service is led nationally by the Postmaster General. The current Postmaster General is a Ms. Megan Brennan. The local Los Angeles Processing and Development Center is broken into two primary departments; the customer care department and the processing department. The customer care department is headed nationally by Enterprise Customer Care Manager Salina Ferrow. The local Los Angeles branch is headed by Customer Care Center Manager Stephen D. Wolf. Mr. Wolf then oversees four customer care operations managers and each of those managers oversees approximately 8 team supervisors (**Ex E-1**).

Branch Establishments: The United States Postal Service operates thousands of branches across the United States and its territories. The headquarters are located at:

Headquarters
475 L'Enfant Plaza SW
Washington, D.C. 20260

MODO Information: The MODO process applies The Baltimore District Office is the MODO. (b) (7) No specific instructions were given by the MODO.

Workforce: During the time of the initial conference the Los Angeles P&DC had approximately (b) (4) employees (**Ex C-1**). The USPS has approximately 38,000 employees nationwide.

Interstate Commerce: Members of the customer care department regularly use both the internet and telephone to communicate with individuals outside out the state of California. They do this in order to respond to shipping related questions.

Annual Dollar Volume: The firm's annual gross dollar volume of sales for 2014, 2015 and 2016 has been in excess of \$500,000.

Section 3(d) Employer: Beverly Balbarino (**Ex C-1**) is the 3(d) employer as defined under the FLSA. Ms. Balbarino regularly makes suggestions for employees to be terminated and also makes decisions on

behalf of the company, including drafting a nursing mothers' policy for the customer service center at the Los Angeles P&DC to follow. Ms. Balbarino is currently serving as the Acting Manager for Customer Operations Support.

Prior Investigation: This is the 18 investigation and/or (b) (7)(E) of the United States Postal Service by the Los Angeles District Office within the last five years. This includes FLSA, FMLA and FLSANM investigations. This is also the approximately 660th investigation of USPS by the Wage and Hour Division within the last five years. There are also three additional investigations simultaneously being conducted by the Los Angeles District Office. This includes Case I.D. 1828239, 1820738 and 1816036.

Representative: During the course of the investigation the firm utilized the services of in-house counsel Catherine Meek (Ex D-7) and Tuyet Nguyen (Ex D-7a).

Exemptions

Section 13(a)(1): Executive, Administrative or Professional Exemption: The nursing mothers who were subject of the investigation were determined to not be exempt from the minimum wage or overtime provisions of the FLSA. Each of the employees worked as customer care agent and was paid an hourly rate. As such, they were not considered exempt from the nursing mother provisions of the FLSA found in section 7(r).

Status of Compliance

During the course of this investigation it was determined that the firm was in violation of the nursing mothers' provision of the Fair Labor Standards Act. The firm violated §7(r)(1)(a) and §7(r)(1)(b). The firm violated the nursing mother provisions of the act by failing to provide a reasonable amount of break time to one nursing mother and by also failing to provide an adequate space for another nursing mother. Discussions with the firm determined that they did not have a policy in place that would allow for successful implementation of the nursing mothers' provision of the act. As a result, managerial staff often made mistakes and caused violations to occur when the need arose for a mother to express (b) (6), (c) milk.

The firm uses Exam Room #3 (**Ex D-4**) as the primary space for nursing mothers to express their milk. The room is part of the onsite Occupational Health Services department and is generally used as a breakroom for the onsite nurses. However, it also doubles as a nursing room for mothers during its operating hours of 8:00AM to 5:00PM Monday to Friday. Due to the limited hours, this space is not available for individuals who work before 8:00AM, after 5:00PM or on the weekends. The firm has no consistent secondary location available for use for nursing mothers, so when the time arises, the managerial staff may simply find another space, such as Customer Service Manager Office #113 (**Ex D-5**) or even a union office and onsite EEOC office. While all of the rooms may be able to meet the requirements of the nursing mothers' provisions, certain steps are often not taken, including not covering openings in the rooms or posting signs outside the room in the instance where the rooms do not have locks (**Ex D-4**). The firm has three shifts which span the following hours: 1) 3:30PM to 12:00AM, 11:00AM to 7:00PM and 6:00AM to 3:30PM. As a result, each shift has limited access to the nurses' breakroom.

Section 6: This investigation was limited to the nursing mothers' provisions of the act.

Section 7: This investigation was limited to the nursing mothers' provisions of the act.

Section 7(r)(1)(a) Reasonable Break Time for Nursing Mothers: During the course of the investigation the firm was determined to be in violation of this section of the FLSA. The firm violated this section of the act by failing to provide an adequate amount of breaks for one employee. Employee (b) (6), (b) (7)(C) (**Ex B-4**) required at least five breaks to express (b) (6), (b) (7)(C) milk during (b) (6), (b) (7)(C) shift, however, the supervising staff only allowed (b) (6), (b) (7)(C) to pump during (b) (6), (b) (7)(C) three scheduled 15 minute breaks and (b) (6), (b) (7)(C) lunch break. (b) (6), (b) (7)(C) works four 10 hour shifts a week and as such receives three paid 15 minutes breaks each day in contrast to two 15 minute breaks for employees who work an eight hour shift. The supervisors who denied the additional breaks include (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C).

Section 7(r)(1)(b) Adequate Space for Nursing Mothers: During the course of the investigation the firm was determined to be in violation of this section of the FLSA. The firm violated this section by failing to provide an adequate space for one employee to express (b) (6), (b) (7)(C) milk. Specifically, the firm failed to provide employee (b) (6), (b) (7)(C) (**Ex B-2**) with a space that was free from intrusion and shielded from view from (b) (6), (b) (7)(C) coworkers. On one occasion the firm provided the onsite nurses' breakroom (**Ex D-4**) as a space for (b) (6), (b) (7)(C) to express (b) (6), (b) (7)(C) milk, however, the space does not have a lock on the door and no sign

was put up in order to inform other employees that it was in use by a nursing mother.

Section 11: This investigation was limited to the nursing mothers' provisions of the act.

Section 12: The firm was determined to be in compliance with the child labor provision of the FLSA.

(b) (6), (b) (7)(C) on this case was contact and informed of the results of the investigation. (b) (6), (b) (7)(C) was informed that (b) (6), (b) (7)(C) claims could (b) (7)(E) because no records of (b) (6), (b) (7)(C) request or need to express were provided by the firm. (b) (6), (b) (7)(C) (b) (7)(E) (b) (6), (b) (7)(C) informed (b) (6), (b) (7)(C) main to need to put in another request to (b) (6), (b) (7)(C) manager that (b) (6), (b) (7)(C) requires both time and space to nurse.

Disposition

A final conference (**Ex D-1**) was held on November 20, 2017 at the Long Beach Post Office located at 300 Long Beach Blvd. The final conference was held with attorney Catherin V. Meek. In addition to Wage and Hour Investigator (WHI) (b) (6), (b) (7)(C) WHI (b) (6), (b) (7)(C) and WHI (b) (6), (b) (7)(C) were also in attendance. WHI (b) (6), (b) (7)(C) and WHI (b) (6), (b) (7)(C) discussed separate matters with Ms. Meek.

WHI (b) (6), (b) (7)(C) briefly explained coverage and reiterated the investigative period with Ms. Meek. Ms. Meek was then informed of the violations under section 7r, the nursing mothers' provision of the FLSA. Ms. Meek was informed that the firm violated section 7(r)(1)(a) by failing to allow one employee a reasonable amount of break time to express (b) (6), (b) (7)(C) milk. Specifically, Ms. Meek was informed that employee (b) (6), (b) (7)(C) was denied an adequate number of breaks to express (b) (6), (b) (7)(C) milk each day at work. She was then informed that violations of section 7(r)(1)(b) occurred because the firm failed to provide adequate space to one employee. Specifically, Ms. Meek was informed that employee (b) (6), (b) (7)(C) was provided a space that was not free from intrusion due to the lack of a door lock and appropriate signage. Ms. Meek stated she understood that violations, however, she stated she was disappointed that violations were still occurring at the site. She stated that after the previous investigation of the site her office took steps to try to prevent additional violations.

Ms. Meek agreed to come into compliance with the FLSA nursing mothers' provision by ensuring that management staff at the Los Angeles P&DC is aware of what the regulations are and how to implement and respond to request to nurse. Ms. Meek will also directly ensure that supervisors for (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) are aware of the specific violations and will inform them of the remedies to take, including allowing (b) (6), (b) (7)(C) to take an adequate amount of breaks and ensuring that all spaces provided are adequately free from intrusion and that signs are posted when a space is in use. In addition, WHI (b) (6), (b) (7)(C) informed Ms. Meek that due to previous violations at the Los Angeles P&DC and an ongoing investigation at the Santa Clarita P&DC (Case I.D. 1837161), additional steps should be taken to ensure future compliance. Ms. Meek then stated that she is currently working on an internal policy that can be distributed to management. The policy will include information that discusses the spaces that are available to nursing mothers, the amount of times a mother may express milk, the pay policy, milk storage locations, status of bona-fide exempt employees and more. However, Ms. Meek stated the policy will take some time to write and may require a formal review process. WHI (b) (6), (b) (7)(C) informed her that this was a good step in the right direction and requested her to provide a copy of the policy once an adequate draft has been devised.

Recommendations: It is recommended that this case be administratively closed (b) (7)(E)

(b) (6), (b) (7)(C)

Publications provided: FLSA, HRG and Fact Sheets 44, 77A, and 73. Federal Register Vol. 75 No. 244.

(b) (6), (b) (7)(C)

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too far to express milk. (b) (6), (b) (7)(C) is not required to punch out when (b) (6), (b) (7)(C) goes to express milk and (b) (6), (b) (7)(C) is satisfied with the result of the investigation.

Publications provided: Fact Sheet # 73 and FAQ – Break Time for Nursing Mothers from DOL website,

Recommendations: (b) (7)(E)

I recommend this case be administratively concluded.

(b) (6), (b) (7)(C)

Wage and Hour Investigator
07/18/2013